A DIGEST OF INDIAN LAW CASES;

CONTAINING

HIGH COURT REPORTS, 1862-1900,

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1836-1900,

WITH AN INDEX OF CASES.

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

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IN SIX VOLUMES.

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[illegible]

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[illegible]

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17. ——— Suit for administration and accounts of separate estates—*Civil Procedure Code, 1882, s. 44.*—The plaintiffs, who were the widow and daughter of *A*, sued the executors of the will of *A's* father (*B*) for administration and account. There were four distinct subjects of claim in the plaint, *viz.*, (1) the estate of *A's* great-grandfather, (2) the estate of *A's* grandfather, (3) the jewels and ornaments which formed the stridhan of

alleging that they had been presented to her on the occasion of her marriage. The plaint prayed (1) for the declaration that a certain portion of the estate in the hands of the first three defendants had been ancestral property in *B's* hands, (2) for an account and administration, (3) that the jewels and ornaments should be delivered up. *Held* that there was a

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2. - - *Criminal Procedure Code, 1872, s. 453—Practice*—S. 453 of the Criminal Procedure Code simply placed a statutory limit on the number of charges which may legally form part of a single trial. There was nothing in the section, however, to prevent an accused from being separately charged and tried on the same day for any number of distinct offences of the same kind committed within the year. EMPRESS *v.* DHONONJOY BARAI . I. L. R., 3 Calc., 540: 1 C. L. R., 478

3. ——— **Dacoity and receiving stolen property**—*Distinct offences—Penal Code, ss. 395, 412*—The practice of dividing the facts which constitute parts of one offence into several minor offences condemned. A person convicted of dacoity under s. 395 Penal Code, cannot be convicted also of dishonestly receiving stolen property transferred by commission of dacoity under s. 412 when there is no evidence of the commission of more than one offence. QUEEN *v.* SHAHABUT SHEIKH 13 W. R., Cr., 42

4. ——— **Robbery on same night in several different places**—*Criminal Procedure Code, 1872, s. 453—Separate and distinct offences of same kind.*—Where persons are committed on three separate and distinct charges for three separate and distinct robberies committed on the same night in three different houses, they must be tried separately on each of the three charges. QUEEN *v.* ITWAREE DOME . . . 6 W. R., Cr., 83

5. **Theft and house-breaking by night**—*Criminal Procedure Code, 1872, s. 453.*—A person accused of theft on the 1st August, and of house-breaking by night in order to steal on the 2nd August, both offences involving a stealing from the same person, was charged and tried by a Magistrate of the first class at the same time for such offences, and sentenced to rigorous imprisonment for two years for each of such offences. *Held* that the *joinder of the charges was regular under s. 453* of Act X of 1872, and the punishment was within the limits prescribed by s. 314. *Empress* v. *Umeda*, unreported, observed on by STRAIGHT, J. IN THE MATTER OF DAULATIA . I. L. R., 3 All., 305

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[illegible]

limited to offences against the same person. *Per* FIELD, J.—The explanation to s. 453 must be understood as extending and not as limiting the meaning of that section. *Per* NORRIS, J.—Care should be taken

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[illegible]

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[illegible]

sentence; and the Government appealed against his acquittal on the other heads as well as against the

[illegible]

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12. ———— Cheating different persons—*Criminal Procedure Code, 1872, s. 453—Joinder of charges—Offences of the same kind committed in respect of different persons.*—*M* was accused of cheating *G* on two different occasions, and also of cheating *K* on a third occasion. The three offences were committed within one year of each other, and *M* was charged and tried at the same time for the three offences. *Held* that such joinder of charges

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14. ———— Charge of three offences of the same kind—*Criminal Procedure Code (Act X of 1882), s 234*—An accused was charged with criminal breach of trust as a public servant in respect of three separate sums of money deposited in the savings bank under three separate accounts. The third of these charges related to the misappropriation of R195 composed of two separate sums of R150 and R45 alleged to have been misappropriated on the 16th and 25th November, respectively. These sums the accused in his statement

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17. ———— Obtaining minor for prostitution

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18. — — Rioting and criminal trespass—Criminal Procedure Code (Act X of 1882), ss 233, 234, 537—Separate charges for distinct offences—Five persons were charged with having committed the offence of rioting on the 5th December; four out of those persons and one F were charged with having committed the offence of criminal trespass on the 9th December. These two cases were taken up and tried together in one trial and were decided by one judgment. *Held* that the trial was illegal, and the defect was not cured by s. 537 of the Criminal Procedure Code. IN THE MATTER OF THE PETITION OF CHANDI SINGH. QUEEN-EMPRESS v. CHANDI SINGH I. L. R., 14 Calc., 395

19. Receiving stolen property and theft—Criminal Procedure Code, 1882, ss 233, 239—Joint trial. B, M, K and E were jointly tried. B for receiving stolen property under s. 411 of the Penal Code and the others for theft under s. 380, and were convicted. *Held* that the joinder of the above charges was illegal, and was a ground for setting aside the conviction and ordering a new trial, but not for discharging the accused. *In the matter of David, 6 C. L. R., 215,* distinguished. BISHNU BANWAR v. EMPRESS . . 1 C. W. N., 35

20. — Offences committed by different accused against different persons at different times—Criminal Procedure Code, 1882, ss 235 and 239—Joint trial—If, in any case, either the accused are likely to be bewildered in their defence by having to meet many disconnected charges, or the prospect of a fair trial is likely to be endangered by the production of a mass of evidence directed to many different matters and tending by its mere accumulation to induce an undue suspicion against the accused, then the propriety of combining the charges may well be questioned. The four accused, who were members of the Dharwar police force,

s. 348, Penal Code, committed against H between the 5th and the 18th January 1889. (3) Accused Nos 1 and 3 for an offence under s. 348, Penal Code, committed against R on the 15th January 1889. (4) Accused No 3 for an offence under s 330, Penal

under s 348 committed against Y during the same period (7) Accused Nos 1, 2, and 3 for an offence under s 346, Penal Code, committed against Y between 8th February and 9th March 1889. The accused were committed to the Court of Session in two separate cases. The Sessions Judge tried both cases together under ss. 235 and 239 of the Code of Criminal Procedure (Act X of 1882), as the same four

JOINDER OF CHARGES—continued.

of the offences charged and sentenced to various

must to some extent have had the effect of embarrassing and confusing the accused. *Held* also that all the several acts of violence alleged to have been committed against H during his illegal confinement could be rightly regarded as constituting a single transaction. But the act of violence said to have been committed against R at a different place could not be regarded as a part of that transaction. Nor was the wrongful confinement of R by accused Nos. 1 and 3 on the 15th January a part of the transaction constituted by the hurt caused to her by accused No. 3 on the previous day. In the same way all acts of hurt caused to Y during his first period of wrongful confinement would with the confinement form a part of the same transaction; but the second period of con-

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14. ——— **Charge of three offences of the same kind**—*Criminal Procedure Code (Act X of 1882), s. 234*—An accused was charged with criminal breach of trust as a public servant in respect of three separate sums of money deposited in the savings bank under three separate accounts. The third of these charges related to the misappropriation of R195 composed of two separate sums of R150 and

JOINDER OF CHARGES—*continued.*

been held in contravention of s. 234 of the Code of Criminal Procedure,—*Held* that the entries in the account books did not clearly show that the misappropriation of the sum of R195 took place on two dates, or consisted of two transactions, the entries having

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15. ——— **Framing incorrect record, forgery and using forged document**—*Penal Code (Act XLV of 1860), ss. 167, 466, 471—Sepa-*

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the Code of Criminal Procedure, and then have proceeded to hold separate trials; that he should not

adopted. IN THE MATTER OF THE PETITION OF SREENATH KUR. EMPRESS v. SREENATH KUR [I. L. R., 8 Calc., 450 : 10 C. L. R., 421

16. ——— **Offences one of which is a summons and the other a warrant case**—*Summons and warrant cases—Criminal Procedure Code, ss 247 and 253—Procedure.*—In the investi-

17. ——— **Obtaining minor for prostitution**—*Criminal Procedure Code, ss. 234 and 537—Penal Code, ss 372, 373—Misjoinder of charges—Immaterial irregularity.*—A woman, being a member of the dancing girl caste, obtained possession of a

girl were charged together under ss.

JOINDER OF CHARGES—*continued.*

18. — — Rioting and criminal trespass—*Criminal Procedure Code (Act X of 1882), ss. 233, 234, 537—Separate charges for distinct offences*—Five persons were charged with having committed the offence of rioting on the 5th December; four out of those persons and one *F* were charged with having committed the offence of criminal trespass on the 9th December. These two cases were taken up and tried together in one trial and were decided by one judgment. *Held* that the trial was illegal, and the defect was not cured by s. 537 of the Criminal Procedure Code. IN THE MATTER OF THE PETITION OF CHANDI SINGH. QUEEN-EMPRESS *v.* CHANDI SINGH **I. L. R., 14 Calc., 395**

19. Receiving stolen property and theft—*Criminal Procedure Code, 1882, ss. 233, 239—Joint trial.* *B. M. K.* and *R* were jointly tried. *B* for receiving stolen property under s. 411 of the Penal Code and the others for theft under s. 380, and were convicted. *Held* that the joinder of the above charges was illegal, and was a ground for setting aside the conviction and ordering a new trial, but not for discharging the accused. *In the matter of David, 6 C. L. R., 245,* distinguished. BISHNU BANWAR *v.* EMPRESS . **1 C. W. N., 35**

20. — Offences committed by different accused against different persons at different times—*Criminal Procedure Code, 1882, ss. 235 and 239—Joint trial.*—If, in any case,

accumulation to induce an undue suspicion against the accused, then the propriety of combining the charges may well be questioned. The four accused, who were members of the Dharwar police force, were charged with ill-treating the complainant *H*, his wife *R*, and his son-in-law *Y*, during the course of

mitted against *R* on the 15th January 1889. (4) Accused No. 3 for an offence under s. 330, Penal Code, committed against *R* on the 14th January 1889 (5) All the accused for an offence under s. 330, Penal Code, committed against *Y* between the 15th and 23rd January 1889. (6) All the accused for an offence under s. 348 committed against *Y* during the same period (7) Accused Nos. 1, 2, and 3 for an offence under s. 346, Penal Code, committed against *Y* between 8th February and 9th March 1889. The accused were committed to the Court of Session in two separate cases. The Sessions Judge tried both cases together under ss. 235 and 239 of the Code of Criminal Procedure (Act X of 1882), as the same four persons were accused in both cases and "were charged with different offences committed in what was virtually one transaction, namely, a police investigation into an alleged theft." The accused were convicted of the offences charged and sentenced to various

rassing and confusing the accused. *Held* also that all the several acts of violence alleged to have been committed against *H* during his illegal confinement could be rightly regarded as constituting a single transaction. But the act of violence said to have been committed against *R* at a different place could not be regarded as a part of that transaction. Nor was

finement would with the confinement form a part of the same transaction; but the second period of confinement, which was said to have commenced some time after the termination of the first period of confinement, would be a separate transaction. QUEEN-EMPRESS *v.* FAKIRAPA . **I. L. R., 15 Bom., 491**

21. ——— Trial of separate offences and accused together—*Criminal Procedure*

another robbery committed two or three hours previously and at a place close to the scene of the robbery and murder,—*Held* that the trial of these separate offences together, though an error or irregularity ... riminal ... whole

I. L. R., 14 All., 502

22. ——— Separate charges for dis-

JOINDER OF CHARGES—*concluded.*

each set of documents with the respective written statements in the three suits, and as there was nothing to show that any of the documents had been used at any other time, there was only one using in respect of each set of documents, and that there was therefore no valid ground for questioning the conviction. QUEEN-EMPRESS v. RAGHU NATH DAS
[I. L. R., 20 Calc., 413

23. ———— Offences of same kind not

I. L. R., 22 Calc., 176, overruled. IN THE MATTER OF ABDUR RAHMAN . I. L. R., 27 Calc., 839
[4 C. W. N., 656

JOINDER OF PARTIES.

See CASES UNDER MISJOINDER.

See CASES UNDER MULTIFARIOUSNESS.

See CASES UNDER PARTIES—ADDING PARTIES TO SUITS.

See SPECIFIC RELIEF ACT, s 9.
[I. L. R., 15 All., 384

JOINT CONTRACTORS.

See CONTRACT ACT, s. 43. 25 W. R., 419
[I. L. R., 3 Calc., 353
I. L. R., 5 Mad., 37, 133
I. L. R., 24 Bom., 77
I. L. R., 22 All., 307

JOINT CREDITORS.

See DEBTOR AND CREDITOR.
[I. L. R., 20 Mad., 461

See CASES UNDER LIMITATION ACT, 1877, ART. 179—JOINT DECREE—JOINT DECREE-HOLDERS.

See RIGHT OF SUIT—JOINT RIGHT.
[I. L. R., 7 All., 313

JOINT DEBTORS.

See CASES UNDER CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

See LIMITATION ACT, 1877, ART. 12 (1871, ART. 14) . . I. L. R., 2 Calc., 98

See CASES UNDER LIMITATION ACT, 1877, ART. 179—JOINT DECREE—JOINT JUDGMENT DEBTORS.

JOINT DECREE.

See CASES UNDER CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

See CASES UNDER EXECUTION OF DECREE—JOINT DECREE, EXECUTION OF AND LIABILITY UNDER.

See LIMITATION ACT, 1877, ART. 99 (1871, s. 100) . . I. L. R., 4 Calc., 529
[3 C. L. R., 480

See CASES UNDER LIMITATION ACT, 1877, ART. 179 (1859, s. 20)—JOINT DECREE.

JOINT DECREE-HOLDERS.

See CASES UNDER LIMITATION ACT, 1877, ART. 179—JOINT DECREE—JOINT DECREE-HOLDERS.

See MULTIFARIOUSNESS.
[I. L. R., 1 All., 444

JOINT FAMILY.

See ARMS ACT, 1878, s 19.
[I. L. R., 15 All., 129

See ENHANCEMENT OF RENT—NOTICE OF ENHANCEMENT—SERVICE OF NOTICE.
[I. L. R., 4 Calc., 592
I. L. R., 10 Calc., 433

See GUARDIAN—APPOINTMENT.
[I. L. R., 8 Calc., 656
L. R., 9 I. A., 27
I. L. R., 19 Calc., 301
I. L. R., 19 Bom., 309
I. L. R., 17 All., 529
I. L. R., 20 All., 400

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY FATHER.

See HINDU LAW—JOINT FAMILY.

See CASES UNDER MALABAR LAW—JOINT FAMILY.

See PARTIES—PARTIES TO SUITS—JOINT FAMILY.

See PARTIES—PARTIES TO SUITS—PARTNERSHIP, SUITS CONCERNING.
[I. L. R., 18 Calc., 86
I. L. R., 18 Mad., 33

———— business.

See HINDU LAW—JOINT FAMILY—DEBTS AND JOINT FAMILY BUSINESS.

———— Exclusion from—

See CASES UNDER LIMITATION ACT, 1877, ART. 127 (1859, s. 1, cl. 13).

———— property.

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE COMPROMISE . I. L. R., 1 All., 651

JOINT FAMILY—*concluded.*

See Cases under Execution of Decree—Mode of Execution—Joint Property

See Cases under Hindu Law—Inheritance—Joint Property and Survivorship

See Cases under Hindu Law—Joint Family—Sale of Joint Family Property in Execution of Decree, etc.

See Cases under Hindu Law—Partition.

See Cases under Sale in Execution of Decree—Joint Property.

——— Representative of, for voting purposes.

See Calcutta Municipal Consolidation Act, s. 31

[I. L. R., *19 Calc.*, 102, 195 note, 198

——— Suit for share of—

See Decree—Form of Decree—Possession I. L. R., 1 Bom., 95

[I. L. R., 5 Bom., 493, 496, 499
3 Mad., 177

See Cases under Limitation Act, 1877, art. 127 (1859, s. 1, cl. 13).

See Cases under Parties—Parties to Suits—Joint Family.

JOINT LANDLORDS.

See Bengal Tenancy Act, s. 56

[I. L. R., 24 Calc., 169

See Bengal Tenancy Act, s. 188.

JOINT MORTGAGORS.

I. L. R., 14 All., 1

JOINT PROPERTY.

See *Certificate of Administration*—Right to sue or execute Decree without Certificate

[I. L. R., 19 Bom., 338
I. L. R., 17 All., 578
I. L. R., 23 Calc., 912
I. L. R., 20 Mad., 232
I. L. R., 22 Mad., 380
1 C. W. N., 32

See Cases under Co-sharers.

See Cases under Execution of Decree—Mode of Execution—Joint Property.

See References under Joint Family Property.

See Cases under Sale in Execution of Decree—Joint Property.

JOINT TENANCY.

See Hindu Law—Inheritance—Joint Property and Survivorship.

[I. L. R., 3 Bom., 151

See Hindu Law—Inheritance—Special Heirs—Females—Widow.

[1 Bom., 66
3 Mad., 268, 424
I. L. R., 1 Mad., 290
L. R., 4 I. A., 212
I. L. R., 2 Mad., 194
I. L. R., 7 All., 114

See Hindu Law—Will—Construction of Wills—Vested and Contingent Interests.

[I. L. R., 11 Bom., 69, 573
I. L. R., 11 Mad., 258
I. L. R., 23 Calc., 670
L. R., 23 I. A., 37

See Survivorship.

[2 Bom., 55: 2nd Ed., 53

See Will—Construction.

[I. L. R., 21 Calc., 488
I. L. R., 23 Bom., 80

JOINT WRONG-DOERS.

See Cases under Contribution, Suit for—Joint Wrong-doers.

See Res Judicata—Parties—Same Parties or their Representatives.

[I. L. R., 14 Bom., 408

JUDGE.

See District Judge.

See Judge of High Court.

See Under Land Acquisition Act, 1870, ss. 15 and 39.

See References under Special Judge.

See Subordinate Judge.

See Witness—Civil Cases—Persons competent or not to be Witnesses.

[I. L. R., 19 Mad., 263

See Witness—Criminal Cases—Person competent or not to be Witness.

[7 W. R., 190
20 W. R., Cr., 76
I. L. R., 3 All., 573
4 B. L. R., A. Cr., 1

——— Discretion of—

See Appellate Court—Exercise of Powers in various Cases—General Cases . I. L. R., 6 Bom., 304

JUDGE—*continued.*

See CERTIFICATE OF ADMINISTRATION—CANCELMENT OR RECALL OF CERTIFICATE . 8 B. L. R., Ap., 14 note

See CERTIFICATE OF ADMINISTRATION—NATURE AND FORM OF CERTIFICATE. [4 B. L. R., A. C., 149

See CONFESSION OF JUDGMENT. [3 B. L. R., A. C., 396

See HINDU LAW—CUSTOM—MAHOMEDANS [I. L. R., 3 Calc., 694

See LOCAL INVESTIGATION 12 W. R., 76 [1 W. R., 141

See CASES UNDER SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—DISCRETION, EXERCISE OF, IN VARIOUS CASES.

See SUMMONS . 15 B. L. R., Ap., 12

——— Disqualification of—

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION [I. L. R., 15 Mad., 83 I. L. R., 18 Bom., 442

——— Privilege of—

See DEFAMATION I. L. R., 17 Mad., 87

——— Prosecution of—

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE [I. L. R., 26 Calc., 869

1. APPOINTMENT OF JUDGE.

1. ——— Consent of Governor General—*Act XXIX of 1845—Ratification.*—The consent of the Governor General in Council, as required by s 5 of Act XXIX of 1845, to the appointment of a Joint Judge had to be given before the appointment was made. The doctrine of subsequent ratification does not apply in a criminal case. REG. v RAMA BIN GOPAL . 1 Bom., 107

2. DUTY OF JUDGE

2. ——— Trial of question of fact—*Ground for decision—Private knowledge or information—Public rumour.*—In trying a question [illegible]

[illegible]

3. ——— *Private knowledge or information.*—A Judge ought not to import his own private knowledge or opinion into a case, but ought simply to decide the issues before him and on the evidence before him. MEHEROONISSA v BHASHAYE MERDHA . . 2 W. R., Act X, 29

REG. v VYANKATRAV SHRINIVAS [7 Bom., Cr., 50

LALLA MEWA LALL v SHEE MAHATO [25 W. R., 152

JUDGE—*continued.*

2. DUTY OF JUDGE—*concluded.*

4. ——— *Knowledge of facts—Judge as a witness*—A Judge cannot, without giving evidence as a witness, import into a case his own knowledge of particular facts HURPURSHAD v. SHEO DYAL. RAM SAHOY v. SHEO DYAL. BALMOKUND v. SHEO DYAL. RAM SAHOY v. BALMOKUND . L. R., 3 I. A., 259: 26 W. R., 55

5. ——— Judicial notice—*Judgment of proper Court.*—It is within the province of a District Judge to know, and it is his business to declare if he knows, whether a decree, produced before him, of a Court within his district was obtained in a proper Court, and is such as he can take judicial notice of. BUKSHOOLLAH CHOWDRY v. HUR CHUNDER CHUND . 16 W. R., 248

6. ——— *Opinion of asses-* [illegible]

3. POWER OF JUDGE.

7. ——— Power of, to delegate to assessors examination of witnesses.—In a case [illegible]

8. ——— Pronouncing judgment out of Court—*Irregularity in criminal case.*—Where a Magistrate conducted and closed the trial in the established Court-house, but could not by reason of illness pronounce judgment which he did at his private house,—*Held* that the Judge was not competent to quash the sentence on this ground and to order a new trial by the Magistrate, his power being limited to refer the case for consideration of the High Court under s. 434, Criminal Procedure Code, 1861. GOVERNMENT v. HOLASEE SINGH [1 Agra, Cr., 17

9 ——— Holding cutcherry in Mun- [illegible]

originally been instituted in that Court, but subsequently transferred to the Judge's Court for trial, and it appeared that the course taken was with the consent, implied, if not express, of both parties, who were represented at the hearing,—*Held* that the District Judge was justified in taking the course he had done MADHARY v GOBURDHUN HULWAI [I. L. R., 7 Calc., 694 : 9 C. L. R., 303

10. ——— Deciding case on evidence taken by his predecessor—*Irregularity in criminal case.*—In the case of several prisoners who were tried by a Sessions Court *consisting of a Judge* and assessors, the latter convicted them, which finding was recorded by the Judge. The Judge, however,

JUDGE—continued.

3. POWER OF JUDGE—continued.

postponed giving judgment and left the district without recording his finding or his judgment, and the Judge's successor, after considering the evidence which had been taken before his predecessor, convicted and passed sentence on the prisoners *Held* that the conviction was not valid and the trial had not been completed The High Court accordingly set aside the conviction and ordered the re-trial of the prisoners upon the charges upon which they were committed for trial. QUEEN v. GORI NOSHYO [21 W. R., Cr., 47

See TARADA BALADI v. QUEEN [I. L. R., 3 Mad., 112

QUEEN v. RUGHOONATH DOSS [23 W. R., Cr., 50

11. — Power of Judge to deal with evidence taken by his predecessor—*Civil Procedure Code, s. 191—Hearing of suit*—A Subordinate Judge, having taken all the evidence in a suit before him, adjourned the case to a future date for disposal. Upon the date fixed a further adjournment was made The Subordinate Judge, at this stage of the proceedings, was removed, and a new Subordinate Judge was appointed. *Held* that the [illegible]

to fix a date for the entire hearing and trial of the case before himself, that he might, at the request of [illegible]

to. AFZAL-UN-NISSA BEGAM v. AL ALI [I. L. R., 8 All., 35

12. ———— *Civil Procedure Code, 1882, s. 191—Hearing of suit—Trial—Death or removal of Judge during suit—Procedure to be followed by new Judge*—The trial of a suit before a Subordinate Judge was completed except for [illegible]

Judge's decision, a second appeal was preferred to the High Court, and an objection was raised on the appellant's behalf that the proceedings taken before the Subordinate Judge were void, and he could not be said to have tried the case, inasmuch as no evidence was taken [illegible] solely on [illegible] objection [illegible] Courts be [illegible]

reference to the ground of appeal and under the circumstances of the case, the officer who passed the decree in the Court of first instance had jurisdiction to deal with and determine the suit in the mode, in which he did *Jagram Das* v. *Narain Lal*, [illegible]

been a waiver on the part of the appellant in reference to the action of the Subordinate Judge of which he now sought to complain. *Per* OLDFIELD, [illegible]

no trial in the legal sense of the word, and the proceedings must be set aside. *Jagram Das* v. [illegible]

one Court only," the identity of the Court is not [illegible]

left off; that where the Judge who has partly heard a case dies or is removed, the trial, so far as it has gone before him, is neither abortive nor becomes [illegible]

bound to fix a new day for commencing the trial *de novo*, nor should the trial proceed before the [illegible]

JUDGE—*continued.*

3. POWER OF JUDGE—*concluded.*

witnesses which, though taken by his predecessor, are already upon the record; that such depositions must be dealt with as materials of evidence before the

additional evidence is to be taken, the Court of appeal is bound to act according to the provisions of ss. 566, 568, and 569 of the Code, but cannot order a new trial, that even when there has been an irregularity on the part of the first Court in receiving or rejecting evidence, the provisions of s. 578 of the Civil Procedure Code and s. 167 of the Evidence Act prohibit the reversal of a decree and the remand of a case for new trial, unless the irregularity affects the merits of the case or the jurisdiction of the Court *Jagram Das* v. *Narain Lal, I. L. R.,* 7 *All.,* 857, and *Afzal-un-nissa Begam* v. *Al Ali, I. L R,* 8 *All.,* 35, dissented from. JADU RAI v. KANIZAK HUSAIN . I. L. R., 8 All., 576

13. ———— *Power of, to try case irregularly by consent of parties—Determina-*

4. QUALIFICATIONS AND DISQUALIFICATIONS.

14. ———— Disqualification—*Interest in case*—Judges should not try cases in which they have any personal interest. CALCUTTA STEAM TUG CO. v. HOSSEIN IBRAHIM BIN JOHUR

[Bourke, O. C., 273

QUEEN v. BOIDONATH SINGH . 3 W. R., Cr., 29

15. ———— *Form of memorandum of appeal—Alleged bias of Judge.—Per* SUBRAMANIA AYYAR, J.—"It is open to an appellant to set up any circumstance showing that a Judge whose decision is appealed against was disqualified

JUDGE—*continued.*

4. QUALIFICATIONS AND DISQUALIFICATIONS—*continued.*

impartiality of the Judge." ZAMINDAR OF TUNI v. BENNAYYA . . . I. L. R., 22 Mad., 155

16. ———— *Interest in case—Municipal cases—Magistrate also Vice-Chairman of Municipality.*—Where a Magistrate was also Vice-Chairman of a Municipal Committee, it was held he could impose fines under Bengal Act III of 1864. ANONYMOUS . . . 3 W. R., Cr., 33

17. ———— *Interest in case—Judge as a witness.*—The jailor of a district jail being accused by one of the jail clerks of falsifying his accounts and defrauding the Government, the matter was enquired into by the District Magistrate, and the jailor was, by the Magistrate's order, placed on trial before a Bench of Magistrates, consisting of the District Magistrate himself, *L*, the Officiating Superintendent of the Jail, and three other Honorary Magistrates. The prisoner and his pleaders were alleged to have stated before the commencement of the

the Government pleader to prosecute, and both the District Magistrate and *L* gave evidence for the prosecution. After the case for the prosecution was closed, two formal charges were drawn up, namely, that the prisoner had debited Government

er's giving the names of the witnesses he intended to call in his defence, *L* was deputed by his brother Magistrates to examine some of them who were connected with the jail, in order "to guard against deviation," and the depositions so taken were placed on the record, "to be used by either party, though

and where he is one of the principal witnesses for the prosecution. QUEEN v. BHOLANATH SEN

[I. L. R., 2 Calc., 23 : 25 W. R., Cr., 57

18. ———— *Disqualification of servant of Corporation of Calcutta to adjudicate on summons at instance of Corporation*—*A*, alleged to have carried on business in Calcutta without having taken out a license under Bengal Act IV

JUDGE—*continued.*

4. QUALIFICATIONS AND DISQUALIFICATIONS—*continued*

of 1870, was summoned at the instance of the Corporation by *B*, a servant of the Corporation and also a Justice of the Peace. The case was subsequently heard by *B*, who convicted *A*, and sentenced him to pay a fine. *Held* that the proceedings and ultimate conviction of *A* were illegal, inasmuch as *B*, being a servant of the prosecutor, *i.e.*, the Corporation, had such an interest as might give him a bias in the matter, and that consequently he ought not to have sat as Justice of the Peace either at the granting or upon the hearing of the summons. WOOD *v.* CORPORATION OF THE TOWN OF CALCUTTA [I. L. R., 7 Calc., 322: 9 C. L. R., 193

See QUEEN *v.* TARINEE CHURN BOSE [21 W. R., Cr., 31

where it was held that there was nothing absolutely illegal in a Municipal Commissioner, also editor of a newspaper, trying a case of which he had expressed a strong opinion in his paper.

19. ———— *Transfer of suits —Judge exercising executive functions—Bengal Civil Courts Act (VI of 1871), s. 25—Act XIV of 1882, s. 25.*—An officer who exercises executive and judicial functions having himself dealt with a certain matter and formed and expressed an opinion

into Court and has to be dealt with judicially. LOBURI DOMINI *v.* ASSAM RAILWAY AND TRADING CO. . . . I. L. R., 10 Calc., 915

20. ———— *Expression of opinion by a Judge in a counter case—Competence to try—Grounds of transfer—Criminal Procedure*

21. ———— *Jurisdiction—*

other Magistrate. IN RE THE PETITION OF BASAPA [I. L. R., 9 Bom., 172

JUDGE—*continued.*

4. QUALIFICATIONS AND DISQUALIFICATIONS—*concluded.*

22. ———— *Disqualification for trying case—Bias—Mamlatdar acting in the management of property under the orders of the Talukdari Settlement Officer—Possessory suit—Interest disqualifying Judge from trying case.*—No Judge can act in any matter in which he has any pecuniary interest, nor where he has any interest,

presume an interest creating a bias sufficient to disqualify him as a Judge. ALOO NATHU *v.* GAGUBHA DIPSANGJI . . I. L. R., 19 Bom., 608

23. ———— *Criminal Procedure Code (Act X of 1882), s. 555—Jurisdiction of*

24. ———— **Qualification as witness—** *Judge giving evidence in case.*—A Judge cannot give evidence in a case merely by making a statement of fact in his judgment. If he intends the Courts to act upon his statement, he is bound to make that statement in the same manner as any other witness. ROUSSEAU *v.* PINTO . 7 W. R., 189

KISHORE SINGH *v.* GUNNESH MOOKERJEE [9 W. R., 252

See IN THE MATTER OF THE PETITION OF HURRO CHUNDER PAUL . . . 20 W. R., Cr., 76

KALLONAS *v.* GUNGA GOBIND ROY CHOWDHRY [25 W. R., 121

25. ———— *Competent witness in trial of case instituted by himself.*—A Judge is a competent witness and can give evidence in a case being tried before himself, even though he laid the complaint acting as a public officer, provided that

5. DEATH OF JUDGE BEFORE JUDGMENT.

26. ———— **Re-hearing of case.**—When a Judge dies after hearing and deciding a case, the only record of his decision being an entry in the Court

JUDGE—*concluded.*

5. DEATH OF JUDGE BEFORE JUDGMENT —*concluded.*

order-book, it is not competent to any co-ordinate Court to take up and re-hear the case; but the High Court will, on the ground of want of record of reasons for the decision, reverse the order and remand the case for re-hearing SUKRAM *v.* KALA KAHAR

[3 B. L. R., A. C., 105

See NOBO CHUNDER BANERJEE *v.* ISHUR CHUNDER MITTER . . . 12 W. R., 254

27. ———— In a case where

were not judgments, but merely memoranda of the opinions and arguments of such Judges in the case. MAHOMED AKIL *v.* ASADUNNISSA BIBEE. MUTTY LALL SEN GURJAL *v.* DESKHAI ROY

[B. L. R., Sup. Vol., 774: 9 W. R., 1

JUDGE OF HIGH COURT.

See PRACTICE—CIVIL CASES—APPLICATION AFTER REFUSAL.

[I. L. R., 16 Bom., 511

———— — acting in English Department of High Court.

See TRANSFER OF CRIMINAL CASE—GENERAL CASES.

[I. L. R., 1 Calc., 219

— — Order of—

See CASES UNDER LETTERS PATENT, HIGH COURT, CL. 15.

— — — Power of—

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[9 B. L. R., Ap., 6

See BENG. REG. V OF 1812, S. 26.

[B. L. R., Sup. Vol., 655

See CERTIFICATE OF ADMINISTRATION—CANCELMENT OR RECALL OF CERTIFICATE . 5 B. L. R., Ap., 21

See GUARDIAN—APPOINTMENT.

[I. L. R., 26 Calc., 133

See LETTERS PATENT, HIGH COURT, CL. 15 . I. L. R., 20 Mad., 152

See REFERENCE TO FULL BENCH.

[B. L. R., Sup. Vol., Ap., 43
I. L. R., 25 Calc., 896

See REVIEW—POWER TO REVIEW.

[I. L. R., 23 Calc., 339

See CASES UNDER SUPERINTENDENCE OF HIGH COURT.

1. ———— Appointment of Judge—*High Courts' Charter Act (24 & 25 Vict., c. 104), ss. 7 and 16—Interpretation of statute—" On the*

JUDGE OF HIGH COURT—*continued.*

happening of a vacancy"—Nature of power conferred by s. 7 discussed—Evidence—Presumption of law arising from the exercise de facto of the functions of a Judge of a High Court.—The word "upon the happening of a vacancy in the office of any other Judge" in s 7 of the 24 & 25 Vict., c. 104, mean upon the happening of a vacancy in the office of a Judge appointed to his office by Her Majesty. They are not applicable to the case of a vacancy caused by a person appointed to act as a Judge, under the provisions of the second part of the abovementioned section, ceasing to perform the [illegible] ted further [illegible] 7 must [illegible] to say, [illegible] vacancy. It cannot be held that the power conferred by the abovementioned section can be held in suspense for several years and then be legally exercised. Where a person had in fact for a period of more than a year been exercising all the functions of a Judge of the High Court [illegible]

[illegible] it was held that though, so far as the validity of the appointment depended upon the provisions of ss. 7 and 16 of the 24 & 25 Vict., c. 104, the appointment was apparently *ultra vires*, it must nevertheless be presumed, in the absence of fuller information [illegible] in the [illegible] vested [illegible] EMPRE[illegible]

2. ———— *'High Courts' Charter Act (24 & 25 Vict., c. 104)* [illegible]

[illegible] rence of a vacancy that such [illegible]

L. R., 25 I. A., 54

RAO BALWANT SINGH *v.* RAMKISHORE.

[2 C. W. N., 273

3. ———— Judge sitting in ordinary original criminal jurisdiction of the High Court—*Trial commenced and evidence partly gone into before one Judge—Retirement of Judge from the case under s. 555, Criminal Procedure Code*

[illegible] *current trials on the same indictment and on the same facts—Nolle prosequi—Criminal Procedure Code, 1882, ss. 282, 283, 323, 555.*—At the Criminal Sessions of the High Court the trial of the accused had commenced before RAMPINI, J., and evidence

JUDGE OF HIGH COURT—concluded.

partly had been gone into when His Lordship retired from the case under s. 353 of the Criminal Procedure Code and the case was adjourned without the jury [illegible]

[illegible]

point where it had been left. Whereupon it was contended on behalf of the accused that STEVENS, J., could not proceed with the trial as RAMPINI, J., and the jury empannelled before him had still the seisin of the case. The Advocate General preferred a *nolle prosequi*, and the accused was discharged QUEEN-EMPRESS *v.* KHAGENDRA NATH BANERJEE

[2 C. W. N., 481

4. ——————— *Grant of application for leave to institute suit which had been refused by another Judge.*—Leave to institute a suit relating to property out of the jurisdiction, as well as to property within such jurisdiction, was refused by one Judge on the 30th June 1874. The same application, in the same suit, between the same parties, relating to the same property, and founded on the same cause of action, was made before another Judge on the 15th December 1874, and the leave [illegible]

[illegible] Mad., [illegible]

JUDGE OF THE SUPREME COURTS IN INDIA.

——— **Power of acting as Judge and jury.**—By the constitution of the Supreme Courts in India, the Judges, for the purpose of the trial of an action, sit as a jury as well as Judges, and the same weight is to be given to a decision of the Judges in such circumstances as to the verdict of a jury in England in which the Judge who tries the case makes no objection. MENADEE MAHOMED CAZUN SERAZEE *v.* ALI MAHOMED SHOOSBEY

[6 Moore's I. A., 27

JUDGES, DIFFERENCE OF OPINION BETWEEN—

See APPEAL IN CRIMINAL CASE—PRACTICE AND PROCEDURE 2 B. L. R., F. B., 25

See CASES UNDER CIVIL PROCEDURE CODE, 1882, *s.* 575.

See LETTERS PATENT, HIGH COURT, CL 15.
[4 B. L. R., A. C., 10, 181
B. L. R., Sup. Vol., 694
13 W. R., 310
14 W. R., 298
I. L. R., 10 Calc., 108

JUDGES, DIFFERENCE OF OPINION BETWEEN—concluded.

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10 I. L. R., 1 All., 181
[I. L. R., 9 All., 655

See LETTERS PATENT, HIGH COURT, N.-W P., CL. 27 . 2 N. W., 117
[I. L. R., 11 All., 176

See REFERENCE TO FULL BENCH.
[I. L. R., 3 Calc., 20

See REFERENCE TO HIGH COURT—CIVIL CASES . . 4 C. W. N., 389

JUDGMENT.

See CASES UNDER FOREIGN COURT, JUDGMENT OF.

See CASES UNDER LETTERS PATENT, CL. 15.

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10 . I. L. R., 1 All., 81
[I. L. R., 9 All., 655
I. L. R., 11 All., 375
I. L. R., 17 All., 438

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—JUDGMENTS.

——— **Copy of—**

See REVIEW—FORM OF, AND PROCEDURE ON, APPLICATION
[I. L. R., 17 All., 213

——— **Copy of, Deduction of time necessary for obtaining—**

See CASES UNDER LIMITATION ACT, 1877, *s.* 12 (1871, *s.* 13)

See LIMITATION ACT, 1877, ART. 177.
[I. L. R., 1 All., 644
I. L. R., 19 Bom., 301

——— **in civil suit, Admissibility in evidence of—**

See EVIDENCE—CRIMINAL CASES—JUDGMENT IN CIVIL SUIT.
[I. L. R., 6 Calc., 247
I. L. R., 23 Calc., 610

JUDGMENT—*continued.*

——— in former suit, Admissibility in evidence of—

See CASES UNDER EVIDENCE—CIVIL CASES—DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS.

See CASES UNDER RES JUDICATA—ESTOPPEL BY JUDGMENT.

——— in rem.

See JUDGMENT IN REM.

See RES JUDICATA—ESTOPPEL BY JUDGMENT . I. L. R., 6 Calc., 171
[I. L. R., 16 Mad., 380
I. L. R., 20 Calc., 888
I. L. R., 25 Calc., 522

——— Notes of, to explain decree.

See DECREE—CONSTRUCTION OF DECREE—GENERAL CASES.
[I. L. R., 1 Bom., 158

——— Reversal of—

See CASES UNDER APPELLATE COURT—INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT.

——— Variation of, or addition to—

See CRIMINAL PROCEDURE CODES, s. 367 (1872, s. 461) I. L. R., 3 Mad., 48
[23 W. R., Cr., 49

1. CIVIL CASES.

(*a*) WHAT AMOUNTS TO.

1. ——— Record of impression or opinion on partial evidence.—Where a District

opinion so recorded was not a judgment on appeal. BULORAM BABOO *v.* ISSUR CHUNDER BABOO
[23 W. R., 77

2. ——— Memoranda of opinions—*Resignation or death of Judge before judgment.*—*Held per totam curiam* that written opinions sent to the Registrar by Judges who had retired or died before the judgment in the case was pronounced in open Court are not judgments, but merely memoranda of the opinions and arguments of such Judges. MAHOMED AKIL *v.* ASADUNNISSA BIBEE. MUTTY LALL SEN *v.* DESKHAR ROY
[B. L. R., Sup. Vol., 774: 9 W. R., 1

3. ——— Judgment written by Judge, and pronounced in Court by his successor.—A Subordinate Judge wrote out his judgment in a case which had been heard before him after he had been relieved from his office, and left the judgment to his successor to be pronounced in open Court. The judgment was pronounced in Court by the

JUDGMENT—*continued.*

1. CIVIL CASES—*continued.*

succeeding Subordinate Judge. An objection being

[8 B. L. R., Ap., 60
S. C. PARBUTTY *v.* HIGGIN . 17 W. R., 475

4. ——— Judgment given by successor by Judge getting promotion.—Remarks on the impropriety of a Principal Sudder Ameen, who, after hearing the evidence in a suit, was promoted in the same district from the second to the first grade and refrained from giving judgment, but left it to his successor for decision. *Quære per* MARKBY, *J.*—Whether such decision is legal. RADHA NATH BANERJEE *v.* JODOO NATH SINGH
[7 W. R., 441

5. ——— Death of plaintiff after hearing, but before judgment—*Judgment given by*

CHETAN CHARAN DAS *v.* BALBHADRA DAS
[I. L. R., 21 All., 314

(*b*) LANGUAGE OF.

6. ——— Proper language for judgment—*Judge whose vernacular is English.*—A Judge whose vernacular language is English ought to write his decision in his own language, though to do otherwise does not affect its validity. HURO SOONDURY DABEE *v.* SREEDHUR BHUTTACHARJEE
[17 W. R., 352

(*c*) FORM AND CONTENTS OF JUDGMENT.

7. ——— Oral judgment—*Oral statement of intended judgment.*—A Judge may, at the close of the hearing of a suit, state at once orally the judgment which he intends to record and deliver. ANONYMOUS . . . . 5 Mad., Ap., 8

8. ——— Materials on which judgment should be founded—*Civil Procedure Code, 1859, ss. 172, 183*—*Examination of witnesses in lower Court*—*Perusal of depositions.*—The meaning of s. 183, Act VIII of 1859, taken in connection with s. 172, is that the judgment is to be given upon the examination of the witnesses by the Judge himself in the Court of first instance, and not upon a perusal of depositions except those taken

JUDGMENT—*continued.*

1 CIVIL CASES—*continued.*

under s. 173 and the subsequent sections, which are expressly allowed to be read in evidence at the hearing, and care should be taken, in the transfer of suits and in the disposal generally of the business of the lower Courts, to prevent the necessity of resummoning witnesses NARANBHAI VRIJBHUKANDAS v. NAROSHANKAR CHANDRO SHANKAR

[4 Bom., A. C., 98

9. ——— Decision on facts—*Reasons*—In deciding on the facts of a case, Judges should not base their decision upon some isolated piece of evidence, but take into consideration and record their opinion on the whole evidence offered on both sides. TILUCKDHAREE SINGH v. SAVOODRA SINGH . . . 8 W. R., 9

10. ——— Necessity of distinct findings on material issues.—There must be a distinct finding one way or other on all the material issues in a case SHURNO MOYEE DOSSIA v JOY NARAIN BOSE . . 8 W. R., 481

11. ——— *Duty of Appellate Court as to judgments—Civil Procedure Code, 1859, s. 359*—It is the duty of Appellate Judges to act so far in conformity with the provisions of the Code of Civil Procedure as is sufficient to show that the Court has dealt with each ground of appeal, and more especially to record distinct findings on questions of fact. ANONYMOUS . . 4 Mad., Ap., 56

12. ——— General assent to judgment of lower Court—*Duty of Appellate Court as to judgments*—Where the Civil Judge, confirming a decree of the District Munsif, stated by way of judgment that he was of opinion that the decision of the Munsif was fair and equitable, the High Court, on special appeal, sent back the case with directions to the Civil Judge to record a judgment in substantial conformity with the provisions of the Code of Civil Procedure KRISTNA REDDY v STRINIVASA REDDY . . 4 Mad., Ap, 56 note

13. ——— *Duty of Appel-* [illegible]

[8 W. R., 272

14. ——— Judgment of Appellate Court—*Reasons for the decision—Civil Procedure Code, 1882, s. 574*—S 574 of the Code of Civil Procedure is imperative. Under that section, the Appellate Court is bound to state the reasons for its decision A Court of Appeal framed certain issues under s 566 [illegible]

15. ——— Judgment not in proper form [illegible]

16. ——— *Civil Procedure Code, 1859, s. 359—Judgment of lower Appellate Court—Omission to record decision on material points*—The Judge of the lower Appellate Court not having recorded his judgment as required by s. 359 of Act VIII of 1859, the case was sent back to the lower Court f[illegible] decision, and [illegible] consecutively. [illegible] PRASAD [illegible]

17. ——— *Judgment of Appellate Court.*—The judgment of an Appellate Court should clearly and fully dispose of all the points in issue between the parties by a distinct finding on each of them. BHAGBUT KHAN v. PUDDO BEWA . . . . . 3 W. R., 192

DHUN RAE v. RAMPHUL RAE . 2 N. W., 109

SOOKH RAJ SINGH v. TUFFAZOOL HOSSEN

[2 W. R., 142

18. ——— *Civil Procedure* [illegible]

[I. L. R., 22 Mad., 12

19. ——— Reasons for decision—*Civil Procedure Code, 1859, s. 359.*—S. 359, Code of Civil Procedure, made it incumbent upon an Appellate Court to set down distinctly the point or points on which it has to decide the appeal, and record its reasons for the decision it arrives at in each and all of these points. SHURBESSUR GHOSE v. SADHOO CHURN GHOSE . . . 15 W. R., 130

RAJ CHUNDER BURMUN v. ROMA KANT CHUCKERBUTTY . . . . . 15 W. R., 324

20. ——— *Civil Procedure* [illegible]

GOBURDHUN v. SADHOO . . 1 W. R., 244

KARTICK NAPIT v. PERSONOMOYEE NAPTINEE

[2 W. R., 77

DOOLEE CHUND v. OOMDA BEGUM

[18 W. R., 473

KHETTUR MOHUN GOSSAIN v. BHYRUB CHUNDER SHEET . . . . . 3 W. R., 126

TRILOCHUN DUTT v. ISHEN CHUNDER CHOWDHRY

[3 W. R., 176

JUDGMENT—*continued.*

——— in former suit, Admissibility in evidence of—

See Cases under Evidence—Civil Cases—Decrees, Judgments, and Proceedings in former Suits.

See Cases under Res Judicata—Estoppel by Judgment.

——— in rem.

See Judgment in rem.

See Res Judicata—Estoppel by Judgment . I. L. R., 6 Calc., 171
[I. L. R., 18 Mad., 380
I. L. R., 20 Calc., 888
I. L. R., 25 Calc., 522

——— Notes of, to explain decree.

See Decree—Construction of Decree—General Cases.
[I. L. R., 1 Bom., 158

——— Reversal of—

See Cases under Appellate Court—Interference with, and Power to vary, Order of Lower Court.

——— Variation of, or addition to—

See Criminal Procedure Codes, s. 367 (1872, s. 461) I. L. R., 3 Mad., 48
[23 W. R., Cr., 49

1. CIVIL CASES.

(a) What amounts to.

1. ——— **Record of impression or opinion on partial evidence.**—Where a District Judge on appeal made an order of remand under Act VIII of 1859, s. 356, that evidence might be taken on one of the points raised, and at the same time recorded the impression which his mind had received on the other parts of the case, it was held that the opinion so recorded was not a judgment on appeal. Buloram Badoo *v.* Issur Chunder Badoo
[23 W. R., 77

2. [illegible]

[illegible] before the judgment in the case was pronounced in open Court are not judgments, but merely memoranda of the opinions and arguments of such Judges. Mahomed Akil *v.* Asadunnissa Bibee. Mutty Lall Sen *v.* Deskhar Roy
[B. L. R., Sup. Vol., 774; 9 W. R., 1

3. ——— **Judgment written by Judge, and pronounced in Court by his successor.**—A Subordinate Judge wrote out his judgment in a case which had been heard before him after he had been relieved from his office, and left the judgment to his successor to be pronounced in open Court. The judgment was pronounced in Court by the succeeding Subordinate Judge. An objection being taken in special appeal that the judgment read out by the succeeding Subordinate Judge was not a judgment according to Act VIII of 1859,—*Held* that the judgment was valid. Parbutti *v.* Bhikun
[8 B. L. R., Ap., 98
S. C. Parbutty *v.* Higgin . 17 W. R., 475

4. ——— **Judgment given by successor by Judge getting promotion.**—Remarks on the impropriety of a Principal Sudder Ameen, who, after hearing the evidence in a suit, was promoted in the same district from the second to the first grade and refrained from giving judgment, but left it to his successor for decision. *Quære per* Markby, J.—Whether such decision is legal. Radha Nath Banerjee *v.* Jodoo Nath Singh
[7 W. R., 441

5. ——— **Death of plaintiff after hearing, but before judgment**—*Judgment given by Court in ignorance of plaintiff's death—Judgment and decree, Validity of—Doctrine of nunc pro tunc.*—The successful plaintiff in a suit died a few days after the hearing of the suit had been concluded and judgment reserved. Unaware of the death of [illegible]

(b) Language of.

6. ——— **Proper language for judgment**—*Judge whose vernacular is English.*—A Judge whose vernacular language is English ought to write his decision in his own language, though to do otherwise does not affect its validity. Huro Soondury Dabee *v.* Sreedhur Bhuttacharjee
[17 W. R., 352

(c) Form and Contents of Judgment.

7. ——— **Oral judgment**—*Oral statement of intended judgment.*—A Judge may, at the close of the hearing of a suit, state at once orally the judgment which he intends to record and deliver. Anonymous . . . . 5 Mad., Ap, 8

8. ——— **Materials on which judgment should be founded**—*Civil Procedure Code, 1859, ss. 172, 183—Examination of witnesses in lower Court—Perusal of depositions.*—The meaning of s. 183, Act VIII of 1859, taken in connection with s. 172, is that the judgment is to be given upon the examination of the witnesses by the Judge himself in the Court of first instance, and not upon a perusal of depositions except those taken

JUDGMENT—*continued.*

1. CIVIL CASES—*continued.*

under s. 173 and the subsequent sections, which are expressly allowed to be read in evidence at the hearing, and care should be taken, in the transfer of suits and in the disposal generally of the business of the lower Courts, to prevent the necessity of resummoning witnesses. NARANBHAI VRIJBHUKANDAS v. NARUSHANKAR CHANDRO SHANKAR [4 Bom., A. C., 98

9. ——— *Decision on facts—Reasons.*—In deciding on the facts of a case, Judges should not base their decision upon some isolated piece of evidence, but take into consideration and record their opinion on the whole evidence offered on both sides. TILUCKDHAREE SINGH v. SAVOODRA SINGH . . . 6 W. R., 9

10. ——— Necessity of distinct findings on material issues.—There must be a distinct finding one way or other on all the material issues in a case. SHURNO MOYEE DOSSIA v. JOY NARAIN BOSE . . . . . . 8 W. R., 481

11. ——— *Duty of Appellate Court as to judgments—Civil Procedure Code, 1859, s. 359.*—It is the duty of Appellate Judges to act so far in conformity with the provisions of the Code of Civil Procedure as is sufficient to shew that the Court has dealt with each ground of appeal, and more especially to record distinct findings on questions of fact. ANONYMOUS . . 4 Mad., Ap., 56

12. ——— General assent to judgment of lower Court—*Duty of Appellate Court as to judgments.*—Where the Civil Judge, confirming a decree of the District Munsif, stated by way of judgment that he was of opinion that the decision of the Munsif was fair and equitable, the High Court, on special appeal, sent back the case with directions to the Civil Judge to record a judgment in substantial conformity with the provisions of the Code of Civil Procedure. KRISTNA REDDY v. STRINIVASA REDDY . . . . 4 Mad., Ap, 56 note

13. ——— *Duty of Appellate Court as to judgments.*—An Appellate Court should take notice of all the specific objections argued before it, and not content itself with recording a general assent to a first Court's finding. SHUMBHOONATH CHOWDHRY v. PROKASH CHUNDER DUTT [8 W. R., 272

14. ——— Judgment of Appellate Court—*Reasons for the decision—Civil Procedure* [illegible]

15. ——— Judgment not in proper form—*Civil Procedure Code, 1859, s. 359—Illegal and defective judgment.*—A Judge's decision, not being in conformity with the provision of s. 359, Act VIII of 1859, was held to be illegal and defective. RUGHOBUR SUHAI v. CHATTRAPAT . 1 Agra, 73
IMRIT SINGH v. KOYLASHOO KOER 11 W. R., 558

16. ——— *Civil Procedure Code, 1859, s. 359—Judgment of lower Appellate Court—Omission to record decision on material points.*—The Judge of the lower Appellate Court not having recorded his judgment as required by s. 359 of Act VIII of 1859, the case was sent back to the lower Court f[illegible] decision, and [illegible] consecutively. [illegible] PRASAD [illegible]

17. ——— *Judgment of Appellate Court.*—The judgment of an Appellate Court should clearly and fully dispose of all the points in issue between the parties by a distinct finding on each of them. BHAGBUT KHAN v. PUDDO BEWA . . . . . 3 W. R., 192

DHUN RAE v. RAMPHUL RAE . 2 N. W., 109

SOOKH RAJ SINGH v. TUFFAZOOL HOSSEN [2 W. R., 142

18 ——— *Civil Procedure* [illegible]

19. ——— Reasons for decision—*Civil Procedure Code, 1859, s. 359.*—S 359, Code of Civil Procedure, made it incumbent upon an Appellate Court to set down distinctly the point or points on which it has to decide the appeal, and record its reasons for the decision it arrives at in each and all of these points. SHURBESSUR GHOSE v. SADHOO CHURN GHOSE . . . 15 W. R., 130

RAJ CHUNDER BURMUN v. ROMA KANT CHUCKERBUTTY . . . . . 15 W. R., 324

20 ——— *Civil Procedure* [illegible]

GOBURDHUN v. SADHOO . . 1 W. R., 244

KARTICK NAPIT v. PERSONOMOYEE NAPTINEE [2 W. R., 77

DOOLEE CHUND v. OOMDA BEGUM [18 W. R., 473

KHETTUR MOHUN GOSSAIN v. BHYRUB CHUNDER SHEET . . . . . 3 W. R., 126

TRILOCHUN DUTT v. ISHEN CHUNDER CHOWDHRY [3 W. R., 176

JUDGMENT—*continued.*

1. CIVIL CASES—*continued.*

HOSSEIN BUKSH v. AMEENA KHATOON [16 W. R., 280

KORBAN ALI v. ASHAN ALI . 4 W. R., 4

SHATHUK PAUL v. GUDADHUR ROY [4 W. R., 100

GANPATRAM LAKHMIRAM v. JAICHAND TALAKCHAND . . . . 4 Bom., A. C., 109

BHAGVATSANGJI JALAMSANGJI v. PARTABSANGJI AJJABHAI . . . 4 Bom., A. C., 105

21. ——— The reasons for

MAHADEO CHOWDHRY . 1 B. L. R., S. N., 2

23. ——— *Reversal of judgment of lower Court.*—An Appellate Court is bound to state its reasons for reversing the decision of a lower Court. MAHADEO OJHA v. PARMESWAR PANDAY . . . 2 B. L. R., Ap., 20

MUNSOOB BIBEE v. ALI MEAH . 17 W. R., 358

MAHOMED SALLEH v. NUSSEEROODDEEN HOSSEIN [21 W. R., 284

24. ——— *Civil Procedure Code, 1859, s 359.*—*Held* by MARKBY, J., that in saying that the "reasons" for the decision of an Appellate Court must be stated, s. 359, Act VIII of 1859, meant not the reasons for coming to any conclusion of fact, but the reasons showing upon what points of fact or law the decision runs. The bare fact that a Judge had not given the reasons for his judgment is not in itself a ground of special appeal. RAMESSUR BHUTTACHARJEE v. BHANOO [12 W. R., 272

25. ——— *Omission to state reasons in judgment*—*Civil Procedure Code (Act XIV of 1882), ss 574, 584.*—The fact that the judgment of an Appellate Court is not drawn up in the manner prescribed by s. 574 of the Civil Procedure Code is no ground for a second appeal under

[I. L. R., 12 Calc., 199

26. ——— *Civil Procedure Code, 1859, s. 359* —The judgment of an Appellate

propriety of giving an intelligent and clear account of the evidence in the judgment laid down. NOOR MAHOMED v. ZUHOOR ALLY . 11 W. R., 34

27. ——— *Finding of Ap-*

See KAMAT v. KAMAT . I. L. R., 8 Bom., 371

28. ——— *Judgment unsupported by reasons*—*Defective judgment in facts*—*Grounds of second appeal.*—Where no reasons are given by a lower Appellate Court for the conclusions arrived at, such conclusions cannot be accepted as legal findings of fact in second appeal. *Kamat v. Kamat, I. L. R., 8 Bom, 368 (370),* and *Raghunath v. Gopal Nilu Nathaji, I. L. R., 9 Bom., 452 (454),* referred to. NINGAPPA v. SHIVAPPA [I. L. R., 19 Bom., 323

29. ——— *Omission to give reasons for order holding appeal barred.*—Order discharged under the circumstances, the District Judge having given no reasons for making the order. RAGHUNATH GOPAL v. NILU NATHAJI [I. L. R., 9 Bom., 452

30. ——— *Judgment of Appellate Court* —It is not obligatory on an Appellate Court to meet categorically every one of the arguments advanced by the first Court in support of its decision. The meagreness of the judgment of a lower Appellate Court can only warrant a remand when the judgment does not show that the Court has considered the evidence. KRISHENDRO ROY CHOWDRY v. DIGUMBUREE DEBIA CHOWDRAIN . 16 W. R., 15

See SHUMSHUROODDY v. JAN MAHOMED SIRDAR [21 W. R., 260

31. ——— *Appellate Court*

it confirm generally the order of the Court below. RADHA GOBIND KUR v. RAM KISHORE DUTT [8 W. R., 340

32. ——— *Civil Procedure Code (Act XIV of 1882), s. 574*—*Judgment not containing the reasons for decision, Validity of*—*Judgment of Appellate Court affirming judgment of first Court.*—Where a judgment of the lower Appellate Court does not go fully into the reasons for affirmance and even does not so much as state whether it accepts, as correct, reasons given by the first Court, it is not a proper judgment within the meaning of s. 574 of the Civil Procedure Code. It is very desirable that the Appellate Court should state,

JUDGMENT—*continued*

1 CIVIL CASES—*continued.*

33. ———————— *Omission to give reasons—Appellate Court—Civil Procedure Code, 1877, s. 574.*—Where the judgment of the lower Appellate Court dismissing an appeal was merely as follows "the appeal is dismissed with costs"—the High Court set aside the decree on the ground that the Court had not complied with the provisions of s. 574 of the Civil Procedure Code SRIKANT DEY *v.* HURI DAS PAL **11 C. L. R., 131**

34. ———————— *Affirming judgment of lower Court.*—Where the decision of a case involves issues of fact, and the first Court has gone fully into the evidence and recorded its finding and decision, if the Appellate Court agrees with the conclusions of the Court below, the Appellate Court is not obliged by law to state in detail the reasons previously recited in which it concurs. LALLA JUGGESHUR SAHOY *v.* GOPAL LALL . **15 W. R., 54**

35. ———————— *Civil Procedure Code, 1859, s. 359—Omission to give reasons.*—In a case decided on pure questions of fact, no point being left undetermined, in which the Judge in appeal endorsed the opinion of the first Court, without giving detailed reasons, the High Court did not consider

KULUMUTTEE KOOER *v.* JOWAHUR LALL **[11 W. R., 318**

36. ———————— *Civil Procedure Code, 1859, s. 359.*—Where a lower Appellate Court took no notice in its decision of a large quantity of evidence of very considerable importance which had

held to be not a legal decision in the terms of s. 359, Act VIII of 1859. ADHEEN MISSER *v.* JOOGRAJ MISSER . . . . . . **11 W. R., 312**

37. ———————— *Affirmance of de-*

38. ———————— *Omission to give*

ceeded, but such an omission may form a good ground for an application to the High Court to require the lower Appellate Court to set forth the reasons on which its judgment proceeded. GOLAM HOSSEIN *v.* RAM DOYAL GHOSE . **12 W. R., 152**

39. ———————— *Judgment of an*

the conclusion arrived at. RAM RANGINI CHANDA CHAUDHURANI *v.* CHANDRA BINODE PAL **[1 C. W. N., 691**

40. ———————— *Civil Procedure Code, 1859, s. 359—Ground for remand.*—It is the duty of the Appellate Court when it reverses the decision of the first Court, and more especially when

41. ———————— *Duty of Appellate Court—Transfer of Judge—Irregularity in recording judgment.*—The Civil Judge, in confirming a decision of the District Munsif, did not state the reasons upon which his judgment was founded, and the High Court remitted the case in order that the Civil Judge might record a judgment in

42. ———————— *Omission to give reasons—Death of Judge before judgment.*—A

NOBO CHUNDER BANERJEE *v.* ISHUR CHUNDER MITTER . . . . . **12 W. R., 254**

43. ———————— *Judgment of Appellate Court—Omission to give reasons—Remand*

I. L. R., 10 Calc., 552

44. ———————— Judgment containing findings unnecessary for disposal of case—

JUDGMENT—*continued.*

1. CIVIL CASES—*continued.*

Appellate Court—Dismissal of suit—Findings unnecessary for disposal of case—Appeal by successful party—Civil Procedure Code, 1882, s. 203.—When a suit has been dismissed on the merits in the Court of first instance, and that decision is upheld by the District Judge on appeal, merely on the

LAHIRY . . I. L. R., 11 Calc., 544

45. ——— Additions to judgment after delivery—*Adding reasons for decision.*—It is irregular to add to a judgment once delivered when the effect of the addition is to alter the grounds on which the judgment proceeded. *Semble*—A Judge may append to his judgment additional reasons, merely to show more fully the correctness of the decision at which he has arrived, though such a course is not strictly warranted by the Civil Procedure Code SNADDEN *v* TODD, FINDLAY & Co.

[7 W. R., 288

46. ——— Final disposal on settlement of issues—*Omission to take evidence.*—

v. MEHTAB SINGH . . 2 Agra, 30

47. ——— Form of judgment on appeal—*Judgment not in conformity with law—Dismissal of appeal—Civil Procedure Code (Act XIV of 1882), ss. 551, 574*—The lower Appellate Court, in disposing of an appeal from a decree of the Munsif, recorded the following judgment "Suit laid at R450, value of buffaloes. Appeal rejected

. . . sons for deciding them RAMI DEKA *v* BROJO NATH SAIKIA . . I. L. R., 25 Calc., 97

[1 C. W. N., 692

48. ——— Applicability of provisions as to first appeals—*Remand—Judgment of first Appellate Court—Civil Procedure Code, ss. 574, 578*—The judgment of a lower Appellate Court, after setting forth the claim, the defence, the nature of the decree of the first Court, and the effect of the pleas in appeal, concluded, with general observations, as follows "The point to be determined on appeal is whether or not the decision is consistent with the merits of the case. The Court, having considered the evidence on the record and the judgment of the Munsif, which is explicit enough, concurs with the lower Court. . . . The finding arrived at by the Munsif, that the plaintiff's claim is established, is correct and consistent with the evidence. The pleas urged in appeal are therefore undeserving of consideration" *Held* that this was in law no judgment at all, inasmuch as it did not satisfy the requirements of s. 574 of the Civil Procedure Code, and that the decree of the lower Appellate Court must therefore be set aside, and the record returned to that Court for a proper adjudication, in accordance with the provisions of that section *Mahadeo Prasad v. Sarju Prasad, Weekly Notes, All., 1886, p 171,* referred to. Observations by MAHMOOD, J., upon the distinction between the duties of the Courts of first appeal and those of the Courts of second appeal in connection with the provisions of ss. 574 and 578 of the Civil Procedure Code, and with the remand of cases for trial *de novo*. *Ram Narain v. Bhawanidin, I. L. R., 9 All., 29 note,* and *Sheoambar Singh v. Lallu Singh, I. L. R., 9 All., 30 note,* referred to. SOHAWAN *v.* BABU NAND

[I. L. R., 9 All., 26

49. ——— Judgment of High Court—*Civil Procedure Code, ss. 574, 633—"Substantial question of law"—Contents of judgment—Rules made by High Court under s. 633 for recording judgments.*—The intention of the Legislature as expressed in s 633 of the Civil Procedure Code was that the High Court might frame rules as to how its judgments should be given, whether orally or in writing, or according to any mode which might appear to it best in the interests of justice. The

. . . it is not necessary, in a case where the High Court substantially adopts the whole judgment of the Court below, to go through the formality of re-stating the points at issue, the decision upon each point, and the reasons for the decision. *Per* EDGE, C. J.

. . . would have given. Assuming the provisions of s. 574 to be applicable, a judgment of the High Court stating merely that the appeal must be dismissed with costs and the judgment of the first Court affirmed, and that it was unnecessary to say more than that the Court agreed with the Judge's reasons, is a substantial compliance with those provisions. The judgment of the High Court in a first appeal was as follows: "This appeal must, in my opinion, be dismissed with costs, and the judgment of the first Court affirmed; and I do not think it necessary to say more than that we agree with the Judge's reasons." The appellant applied for leave to appeal to Her Majesty in Council on the

JUDGMENT—*continued.*

1. CIVIL CASES—*continued.*

ground that the requirements of s. 574 of the Civil Procedure Code had not been complied with *Held* by the Full Bench that the objection involved no substantial question of law, and that the application for leave to appeal must therefore be rejected. SUNDAR BIBI *v.* BISHESHARNATH

[I. L. R., 9 All., 93

50. ——— **Finding of lower Court based on misconception of evidence**—*Defective judgment in facts—Ground of second appeal* —The finding on an issue of a lower Appellate Court, which is based on a misconception of what the evidence is cannot be accepted in second appeal as a legal finding on it GOVIND *v.* VITHAL

[I. L. R., 20 Bom., 753

51. ——— **Findings on issues on remand** —*Civil Procedure Code (1882), ss 566, 567, and 574 —Duty of Appellate Court to form its own opinion on the evidence and record reasons for findings—Procedure.*—In certifying to the High Court the findings on issues sent back on remand and found by the Court of first instance, the lower Appellate Court is, in the absence of any admission by the party against whom the issues have been found, bound to form its own opinion on the evidence and record its findings with the reasons for them RAMCHANDRA GOVIND MANIK *v* SONO SADASHIV SARAHJOT

[I. L. R., 19 Bom., 551

52. ——— **Contents of appellate judgment**—*Civil Procedure Code (1882), s 574—Duty of Appellate Court to examine the correctness of a finding in the absence of a memorandum of objections* —A Judge, having remanded a case for further evidence to be taken and a fresh finding recorded on a question of fact, is bound to examine the correctness of the finding, and to state in his judgment the reasons for which he either accepts or rejects it. KUNHI MARAKKAR HAJI *v.* KUTTI UMMA . . . I. L. R., 20 Mad., 496

53. ——— **Date of operation of judgment**—*Adjournment for written judgment—Death of party between hearing and judgment—Civil Procedure Code (1882), s. 234—Practice.*—An appeal having been argued on the 11th November 1892, the case was adjourned for judgment, which was delivered on the 30th November 1892, and was in favour of the plaintiffs. In the meanwhile, the defendant had died. On application for execution, it was contended that the decree was null and void, as the respondent was dead when it was passed. *Held* that the judgment should be treated as operating as if it had been delivered on the day when the argument was closed. NARNA *v.* ANANT

[I. L. R., 19 Bom., 807

54. ——— **Contents of judgment in appeal**—*Civil Procedure Code (1882), s 574—Duty of Appellate Court to hear appeal after remand* [illegible]

findings after evidence had been taken On the [illegible]

Marakkar Haji v. Kutti Umma, I. L. R., 20 Mad., 496 SUBBAYYA *v* RAMI REDDI

[I. L. R., 22 Mad., 344

55. ——— **Judgment of Small Cause Court, what should be contained therein**—*Civil Procedure Code, s. 203—Revision—Civil Procedure Code, ss 562, 622, and 647—Provincial Small Cause Court (Act IX of 1887), s. 25.*—S 203 of the Code of Civil Procedure does not re- [illegible]

MANIK RAHMAT *v.* SHIVA PRASAD.

[I. L. R., 13 All., 533

(*d*) JUDGMENT GOVERNING OTHER CASES.

56. ——— **One judgment governing several cases**—*Filing judgment.*—Where a judgment in one case governed other cases,—*Held* that the filing of that judgment was a substantial compliance with the requirements of the law, and that the filing of a short judgment referring to the other judgment was merely formal, and the delay excusable MOTHOORNATH CHUCKERBUTTY *v.* KISSEN MOHUN GHOSE . W. R., 1864, Mis., 9

BHYRUBNATH SANDYAL *v.* HURE SOONDUREE DOSSEE . . . W. R., 1864, Mis., 26

(*e*) CONSTRUCTION OF JUDGMENT.

57. ——— **Inconsistency in portions of judgment**—*Ambiguity*—In construing a judgment, if a difficulty is found in reconciling the conclusion ultimately arrived at with the previous part, such part must be rejected. BYKUNT CHUNDER CHUCKERBUTTY *v.* DHUNPUT SINGH . 19 W. R., 104

58. ——— **Matter omitted in conclusion arrived at**—*Former decisions of same*

JUDGMENT—*continued.*

1. CIVIL CASES—*concluded.*

(*f*) RIGHT TO COPIES OF.

59. ———— Right of parties to copy of judgment—*Translation*.—Parties to a suit are entitled to receive copies of the original judgment, not merely a translation. VARJIVAN RANGJI *v.* ALI DAJI . . . . . . 1 Bom., 165

60. ———— *Copies of judgment of Courts of Small Causes.*—Judges of Courts

61. ———— Right of strangers to copy of judgment.—Strangers to a suit may obtain as of course copies of judgments, decrees, or orders at any time after they have been passed or made. See Circular Order, 2nd June 1875. IN RE BAMA CHURN GHOSAL . . . 2 C. L. R., 553

62. ———— Copies of, Delay in furnish-

until blank papers were put in Such copies, by s. 198 of Act VIII of 1859 and a resolution of the Court of 6th July 1872, are to be issued on production of the necessary stamps NILMONEY SINGH *v.* CHINIBAS MAHANTI

[12 B. L. R., Ap., 8: 20 W. R., 405

2. CRIMINAL CASES.

63. ———— Illegal judgment—*Judgment pronounced by successor—Re-trial.*—Until the find-

court ANONYMOUS . 4 Mad., Ap., 43

64. ———— Necessity of findings on each charge—*Criminal Court—Sessions Judge.*—

, whether of

arges under

QUEEN *v.*

. 13 W. R., Cr., 50

JUDGMENT—*continued.*

2. CRIMINAL CASES—*continued.*

65. ———— To enter up findings on every head of charge is not only not illegal, but the most convenient course. ANONYMOUS

[6 Mad., Ap., 47

66. ———— Reasons for decision—*Criminal Appellate Court—Judgment in affirming conviction.*—Although as a general rule it is not incumbent on an Appellate Court when confirming a decision to set forth its reasons in full, yet in the circumstances of a case anything peculiar should be noticed. REG. *v.* MOROBA BHASKARJI . 8 Bom., Cr., 101

67. ———— *Sessions Judges.*—Sessions Judges should record their reasons for confirming, reversing, or modifying the sentences or orders of the Magistrates. ANONYMOUS

[5 Mad., Ap., 12

68. ———— *Omission to give reasons—Criminal Procedure Code (Act X of 1882), ss. 367-424.*—A Sessions Judge, after hearing an appeal, gave the following judgment: "It is urged that the evidence is quite untrustworthy, and that the decision should be reversed. The depositions have been gone through, and commented on at considerable length. The Court finds no ground for interference. The appeal is dismissed." *Held* that this was not a sufficient compliance with ss. 367 and 424 of Act X of 1882, and that the case should be re-tried KAMRUDDIN DAI *v.* SONATUN MANDAL

[I. L. R., 11 Calc., 449

69. ———— Judgment not in proper form—*Form and contents of judgment—Criminal appeal to Magistrate—Criminal Procedure Code, 1882, ss. 367, 424.*—A Magistrate, hearing an appeal from the Deputy Magistrate, gave the following judgment. "I see no reason to distrust the finding of the lower Court. The sentence passed, however, appears harsh I reduce the term of imprisonment to fifteen days. The fines and terms of imprisonment in default will stand." *Held*, following the decision in *Kamruddin Dai* v. *Sonatun Mandal, I. L. R., 11 Calc., 449*, that it was not a judgment within the meaning of ss 367 and 424 of the Criminal Procedure Code. IN THE MATTER OF THE PETITION OF RAM DAS MAGHI . I. L. R., 13 Calc., 110

70. ———— *Criminal Procedure Code, 1882, ss. 367 and 424—Judgment, Contents of—Omission to give reasons.*—A District Magistrate, in disposing of an appeal, recorded the following judgment: "The affray was a faction

missed, and the conviction and sentence are confirmed." *Held* that this was not a judgment in accordance with ss. 367 and 424 of the Code of Criminal Procedure (Act X of 1882). IN RE SHIVAPPA BIN SHIDLINGAPPA . . I. L. R., 15 Bom., 11

JUDGMENT—*continued.*

2. CRIMINAL CASES—*continued*

71. ———— *Form and contents of judgment—Criminal Procedure Code (Act X of 1882), ss. 367 and 537.*—A Sessions Judge, in [illegible]

[illegible] believe the evidence. The sentence of one year's imprisonment and R50 fine is not heavy. I dismiss the appeal." It was contended that this was not a judgment within the terms of s. 367 of the Code of Criminal Procedure. *Held* that, having regard to the provisions of s. 537, it does not follow that, because the form of a judgment does not exactly comply with all the requirements of s. 367, it is not a valid judgment, and that, as this judgment showed that the Sessions Judge had appreciated the point that the prosecution had to establish, *viz.*, the credibility of [illegible]

[illegible] *Sonatun Mandal*, I. L. R., 11 Calc., 419, and *In the matter of the petition of Ram Das Maghi*, I. L. R., 13 Calc., 110, referred to and commented on. ROHIMUDDI *v.* QUEEN-EMPRESS

[I. L. R., 20 Calc., 353

72. ———— *Judgment of Appellate Court—Criminal Procedure Code (Act X of 1882), ss. 367 and 421—Appeal rejected without* [illegible]

SINGH [illegible] I. L. R., 21 Calc., 92

73. ———— *Criminal Proce-* [illegible]

[illegible] Code of Criminal Procedure, 1882, should record [illegible]

74. ———— *Criminal Procedure Code (1882), s. 421—Judgment rejecting an appeal.*—In rejecting an appeal under s. 421 of the Code of Criminal Procedure (Act X of 1882), the [illegible]

75. ———— *Form and contents of judgment—* [illegible]

[illegible]

JUDGMENT—*continued.*

2. CRIMINAL CASES—*continued.*

[illegible]

76. ———— *Form of judgment* [illegible]

[illegible] accordance with the law within the meaning of ss. 367 and 424 of the Criminal Procedure Code. GIRISH MITE *v.* QUEEN-EMPRESS

[I. L. R., 23 Calc., 420

77. ———— *Criminal Procedure Code (1882), ss. 362, 367, and 424—Judgment of Appellate Court—What such judgment must contain.*— [illegible] s. 34 of [illegible] one *P B* [illegible] Code, and [illegible]

[illegible] Code. QUEEN-EMPRESS *v.* PANDEH BHAT

[I. L. R., 19 All., 506

78. ———— *Judgment in* [illegible]

[illegible] distinguished. KASIMUDDI *v.* QUEEN-EMPRESS

[I C. W. N., 169

79. ———— *Civil suit—Criminal Procedure Code (Act X of 1882), s. 370* [illegible]

JUDGMENT—*continued.*

2. CRIMINAL CASES—*continued.*

cl. (1)—Summary procedure—Conviction, Reasons for—The meaning of s. 370, cl (1), of Act X of 1882 is that, where the offence found is sufficiently grave to involve a fine of R200 or imprisonment as the substantive sentence, the Magistrate is bound to record his reasons ...

... the decision of the Magistrate may be recorded shortly. A sentence of a fine of R10, and imprisonment in default of payment of the fine, is not a sentence of imprisonment within the meaning of the section. MOTEERAM *v.* BELASEERAM

[I. L. R., 14 Calc., 174

80. ——————— *Criminal Pro-cedure Code, 1882* ...

... with s. 263, cl. (h), set out a brief statement of the reasons for the conviction, which include the findings of fact upon which the conviction is based ...

... there are sufficient materials in support of the conviction LALIT MOHAN SAHA *v.* CHUNDER MOHAN ROY . . . . 3 C. W. N., 281

QUEEN-EMPRESS *v.* SHIDGANDA

[I. L. R., 18 Bom., 97

81. ——————— *Irregularity—Magistrate passing sentence before finishing his judgment—Criminal Procedure Code (Act X of 1882), ss 366, 367, and 537.*—A Magistrate on a charge of rioting passed sentence on the accused without delivering his judgment in open Court, the judgment (one in course of being written during the hearing of the case) being in fact not then completed. The case went on appeal to the Sessions Judge, who, dealing fully with the evidence taken before the Ma...

... did not necessitate a re-trial of the case. *Per* TREVELYAN, J.—The case was more than one of mere "error, omission, or irregularity" within the meaning of s. 537; the judgment having been irregularly arrived at and pronounced, there was no "judgment" in accordance with law, and therefore no fair trial to which every accused person is entitled, the case ought therefore to be re tried. DAMU SENAPATI *v.* SRIDHAR RAJWAR

[I. L. R., 21 Calc., 121

82. ——————— *Criminal Procedure Code (1882), ss. 366, 367, and 537—Pronouncing sentence before writing judgment—Irregularity.*—In this case, after the evidence was adduced on both sides, the Assistant Magistrate fixed a day for hearing argument and passing judgment. On that day argument was heard, and the case adjourned to another day for judgment, when the Magistrate pronounced sentence, though he had not written his judgment. ...

... fell within the purview of s. 537 of the Code. The ...

83. ——————— *Record sent to Appellate Court—Criminal Procedure Code, 1882, s 367, para 5, proviso—Record of heads of charge—Judgment in trial by jury*—*Held* that the words in s. 464, Code of Criminal Procedure, that in trials by jury "heads" of the Judge's "charge" are to be recorded, must be construed reasonably, and include such statement on the part of the Sessions Judge as will enable the Appellate Court to decide whether the evidence has been properly laid before the jury, or whether there has been any misdirection in the charge. QUEEN *v.* KASIM SHAIKH

[23 W. R., Cr., 32

84. ——————— ...

... police officers concerned should be scrutinised and commented on in the same degree as those of other material witnesses, and no further. QUEEN *v.* BUDHI ROY

[23 W. R., Cr., 65

85. ——————— **Note added to judgment of judicial officer in criminal case**—*Irregularity*—Observations by STUART, C. J., on the impropriety of a judicial officer adding a "note" to his judgment in a criminal case impugning the ...

86. ——————— *Rules of High Court, N.-W. P., 18th January 1898, rule 83—Finality of judgment or order of the High Court—Power of Judge to alter it.*—*Held* that a judgment or order of the High Court is not complete until it is sealed in accordance with Rule 83 of the Rules of Court of the 18th January 1898, and up to that time may be altered by the Judge or Judges concerned therewith without any formal procedure by way of review of judgment being taken. QUEEN-EMPRESS *v.* LALIT TIWARI

[I. L. R., 21 All., 177

JUDGMENT IN REM.

See Cases under Estoppel—Estoppel by Judgment.

See Evidence—Civil Cases—Decrees, Judgments, and Proceedings in former Suits

1. ——— Decision as to status of particular person or family—*Judgment inter partes*—A judgment is not a judgment *in rem* because, in a suit by *A* for the recovery of an estate from *B*, it has determined generally concerning the status of a particular person or family; it is a judgment *inter partes*. Kattama Nachiar *v.* Rajah of Shivagunga 2 W. R., P. C., 31
[9 Moore's I. A., 539

2. ——— Rule making judgments conclusive—*Exceptions to rule*—The rule which makes a judgment conclusive against parties, and those who claim under them is subject to certain exceptions which are the offspring of positive law, and the reason of the exception may be generally stated to be that the nature of the proceedings by which there is a fictitious, though not unjust, extension of parties, renders it proper to use the judgment against those not formally parties. The rule as to judgments *in rem*, except in some peculiar cases, results from the nature of the proceedings; and before attempting to apply the rule in this country, consideration should be

authorities in English and Roman law upon the subject examined and commented upon Yarakalamma *v.* Anakala Naramma . 2 Mad., 276

3. ——— Judgments of mofussil Courts—*High Court—Evidence.*—In a suit by *R C*

sionary heir. In a subsequent suit by *K L* against *R C* for a declaration of his right as heir to *R N* and for possession of the property on the ground that *R N* had not been adopted by, but took the property by gift from, *J L*,—*Held* that the judgment in the former suit was not admissible in evidence on the question of the adoption. *Semble*—There are no judgments *in rem* in the mofussil Courts; and, as a

4. ——— Decision as to disputed succession to raj—*Power of Courts to give judgment in rem.*—In a case of disputed succession to a raj, *A*, one son of the Raja, deceased, was put into possession

JUDGMENT IN REM—*concluded.*

under Act XIX of 1841, and a suit brought against him on behalf of another infant son, *B*, failed on proof of the legitimacy of *A*. A third son, *C*, now claimed

and the like, and which in the case of war might be exercised in matters of prize) any Court capable of giving a judgment *in rem*? Jogendro Deb Roy Kut *v.* Funindro Deb Roy Kut
[11 B. L. R., 244: 17 W. R., 104
14 Moore's I. A., 367

operate as a judgment *in rem*. Gungadhur Roy *v.* Wooma Soonderee Dossee
[B. L. R., Sup. Vol., 672
2 Ind. Jur., N. S., 120: 7 W. R., 347

See Lala Ranglal *v.* Deonarayan Tewary
[6 B. L. R., 69: 14 W. R., 201

evidence against persons who were not parties to them. Motee Lall *v.* Bhoop Singh
[2 Ind. Jur., N. S., 245: 8 W. R., 64.

JUDGMENT-DEBT.

See Contract Act, s. 25.
[I. L. R., 3 All., 781
I. L. R., 14 Bom., 390

JUDGMENT-DEBTOR.

See Cases under Arrest—Civil Arrest.

See Cases under Attachment—Attachment of Person.

See Bengal Tenancy Act, s. 174.
[I. L. R., 15 Calc., 482

See Imprisonment.
[I. L. R., 13 Mad., 141

JUDGMENT-DEBTOR—*continued.*

See CASES UNDER INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

See RIGHT OF SUIT—EXECUTION OF DECREE . I. L. R., 15 Calc., 437, 674
[I. L. R., 23 Mad., 195
I. L. R., 10 All., 479

——— Death of—

See CIVIL PROCEDURE CODE, s. 108.
[I. L. R., 21 All., 274

See CIVIL PROCEDURE CODE, s. 244—PARTIES TO SUITS
[I. L. R., 10 All., 479
I. L. R., 24 Calc., 62
I. L. R., 16 All., 286
I. L. R., 19 All., 332

See CIVIL PROCEDURE CODE, s 244—QUESTIONS IN EXECUTION OF DECREE.
[I. L. R., 17 All., 431

See CASES UNDER EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

See LIMITATION ACT, ART 179—NATURE OF APPLICATION—IRREGULAR AND DEFECTIVE APPLICATIONS.
[I. L. R., 19 All., 337

See CASES UNDER REPRESENTATIVE OF DECEASED PERSON.

See CASES UNDER SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE.

——— Discharge of—

See ATTACHMENT—ATTACHMENT OF PERSON . . . Bourke, O. C., 109
[5 N. W., 220
I. L. R., 6 Mad., 170
I. L. R., 8 Mad., 21, 276, 503
I. L. R., 12 Bom., 46
I. L. R., 11 Calc., 527
I. L. R., 20 Calc., 874

See CIVIL PROCEDURE CODE, 1882, s. 341
[I. L. R., 9 Bom., 181
I. L. R., 8 Mad., 21

See CASES UNDER INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE

See CASES UNDER SUBSISTENCE-MONEY.

——— Insanity of—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY
[I. L. R., 19 Mad., 219

JUDGMENT-DEBTOR—*concluded.*

——— Representative of—

See CASES UNDER CIVIL PROCEDURE CODE, s. 244—PARTIES TO SUITS.

See CASES UNDER REPRESENTATIVE OF DECEASED PERSON.

JUDICIAL ACT.

See CASES UNDER JUDICIAL OFFICERS, LIABILITY OF.

JUDICIAL COMMISSIONER.

——— Power of—*False evidence—Criminal Procedure Code (Act XXV of 1861), s. 172.*—A Judicial Commissioner has no power, under s. 172 of the Code of Criminal Procedure, to commit a witness for a false deposition given before the Assistant Commissioner. QUEEN *v.* MATI KHOWA
[3 B. L. R., A. Cr., 36: 12 W. R., Cr., 31

JUDICIAL COMMISSIONER, ASSAM.

——— Jurisdiction of—*Act XL of 1858*—

JUDICIAL COMMISSIONER, PUNJAB.

——— Circular orders passed by—

See INDIAN COUNCILS ACT.
[12 B. L. R., P. C., 167

JUDICIAL DECISIONS.

See HINDU LAW—CUSTOM—GENERALLY.
[I. L. R., 16 All., 379

JUDICIAL NOTICE.

See CIVIL PROCEDURE CODE, 1882, s. 87.
[4 B. L. R., O. C., 51

See EVIDENCE ACT (I OF 1872), s 57.
[I. L. R., 14 Calc., 176

See RELIGION, OFFENCES RELATING TO
[I. L. R., 7 All., 461

——— Justice of the Peace—*Case sent up to High Court.*—Where *R* had tried a case and

[1 B. L. R., O. Cr., 15: 15 W. R., Cr., 71 note

JUDICIAL OFFICER.

See BENGAL TENANCY ACT, s. 153
[I. L. R., 15 Calc., 327

See FALSE EVIDENCE—GENERALLY
[I. L. R., 27 Calc., 820

——— Charge by, for executing commission.

See COMMISSION—CIVIL CASES
[12 B. L. R., Ap., 4

——— Transfer of—

See CASES UNDER MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATE DURING TRIAL.

JUDICIAL OFFICERS, LIABILITY OF—

from actions for any wrong or injury done by them in the exercise of their judicial offices, does not confer unlimited protection, but places them on the same

without jurisdiction, unless he knew, or had the

2. ——— Act XVIII of 1850—*Person acting within limits of his jurisdiction—Bonâ fides*—Under the provisions of s. 1 of Act XVIII of

3. ——— *Acts done in good faith—Pleading.*—Act XVIII of 1850 does not pro-

4. ——— *Criminal Procedure Code, 1861, ss 68, 212—Liability of Magistrate.*—*Held* that neither Act XVIII of 1850 nor ss. 68 and 212 of the Code of Criminal Procedure, 1861, protected a Magistrate who had failed to act reasonably, carefully, and circumspectly in the discharge of his duties. VINAYAK DIVAKAR *v.* BAI ITCHA . . . . . 3 Bom., A. C., 36

JUDICIAL OFFICERS, LIABILITY OF—*continued.*

5. ——— *Liability of public servant for injury done by his act, illegal though bonâ fide—Protection of judicial officers—Canton-*

proceed, or intend to proceed, under s. 4 of Act XXXVI of 1858. *Held* that, although his belief might have justified the commanding officer, if he had proceeded under the provisions last mentioned, yet he not having done so, and not having any legal authority for what he had done, was not protected from liability in respect of the above acts. SINCLAIR *v.* BROUGHTON
[I. L. R., 9 Calc., 341 : 13 C. L. R., 185
L. R., 9 I. A., 152

6. ——— *Liability of Municipal Commissioner sitting as Magistrate under Beng. Act III of 1864.*—A Municipal Commissioner

7. ——— *Collector of Sea Customs at Madras—Imposition of fine without*

8. ——— *Judicial act within the limits of the officer's jurisdiction—Such act protected, though done erroneously, illegally or not

JUDICIAL OFFICERS, LIABILITY OF —*continued.*

even illegally, or without believing in good faith that he had jurisdiction to do the act complained of. Where the act done or ordered to be done in the discharge of judicial duties is without the limits of the officer's jurisdiction, he is protected if, at the

Penal Code, and having issued a warrant, purporting to act under s. 386 of the Criminal Procedure Code, for the levy of the fine by distress and sale of cattle belonging to the accused, sold such cattle before the date fixed for the sale, and in contravention of form 37, sch V and s. 554 of the Code, and form D in ch V of the circular orders of the High Court,—*Held* that he was acting in the discharge of his judicial

9. ——— *Liability of Magistrate—Conviction of servant for misbehaviour—Bom. Reg. I of 1814—Act II of 1839.*—*Held* that an action of trespass for false imprisonment lay

FIELD . . . . . . 3 Bom., Ap., 1

10. ——— *Order made by Political Agent in his executive capacity.*—In a suit brought in the High Court, Bombay, by the Hindu

JUDICIAL OFFICERS, LIABILITY OF —*continued.*

inhabitants of Mahalingpore, a village in the territories of the Chief of Modhool, against the Political Agent at the Court of Modhool, for damages for injury done to them by certain orders made by him which affected their caste, the plaint stated that the defendant, at the time the orders were made, exercised exclusive civil jurisdiction throughout the territories of the Chief of Modhool, and that the Court of the

11. ——— *Refusing bail,*

12. ——— *Liability of Magistrate—Delay in trying prisoners—Power to adjourn case.*—A Deputy Magistrate, who without reason causes delay in proceeding with the trial of persons whom he keeps in jail, is liable, notwithstanding Act XVIII of 1850, to an action for damages if the prisoners are eventually acquitted. By s. 22 of the Code of Criminal Procedure, a Magistrate may, by a written order from time to time, adjourn an enquiry for a period not exceeding fifteen days.

QUEEN *v.* SHAHON . . 11 W. R., Cr., 19

13. ——— *Illegal arrest when acting bonâ fide—Liability of public officer.*—Where the defendant, a commanding officer of a

14. ——— *Improper procedure of Magistrate.*—The Magistrate of a district issued an order under s. 308 of the Criminal Procedure Code, 1861, calling on the petitioner to remove a building, on the ground that it was an unlawful obstruction in a highway. A jury of five persons, though without any instructions and differing in their views as to the proper performance of their duties found after the time for ...

tioner showed cause under s. 313, but without effect,

JUDICIAL OFFICERS, LIABILITY OF —continued.

and the order was repeated. The Sessions Judge meanwhile, upon application of the petitioner, called for the proceedings under s 434, but the Magistrate wrote questioning the Judge's authority to interfere, and without waiting for the reply proceeded to try the petitioner for disobedience to an order duly promulgated by a public servant, and sentenced him to 25 days' imprisonment under s 188 of the Penal Code. His house was also pulled down. The proceedings were ultimately forwarded to the Sessions Judge, whose successor in office returned them with the [illegible]

15 ——— *Liability of Magistrate—Illegal order under s 308 of Criminal Procedure Code, 1861.*—A Magistrate who makes an illegal order, which purports to be made under s. 308 of Act XXV of 1861, but is not made in accordance [illegible]

[4 Bom., A. C., 1[illegible]

16. ——— *Liability of Magistrate—Officer acting without jurisdiction.*—Suit to recover damages from defendant, Deputy Magistrate of the Zillah of Trichinopoly, for a trespass alleged to have been committed in execution of an [illegible]

with due care and attention, but from feelings of personal animosity towards plaintiff, and was therefore not protected by Act XVIII of 1850; upon the third issue he assessed the damages at R500. The defen-

first point that an entire absence of jurisdiction to make the order had been shown; upon the second [illegible]

17. ——— *Liability of Magistrate to damages for illegal order made under s. 308, Criminal Procedure Code, 1861.*—The first [illegible]

[5 Mad., 345

18. ——— *Liability of Magistrate—Order under Criminal Procedure Code, (Act XXV of 1861), Ch. XX, ss. 62, 308.*—The [illegible]

JUDICIAL OFFICERS, LIABILITY OF —*concluded.*

of judicial enquiry, his proceedings presumably are characterized by want of care. TARAKNATH MOOKHOPADHYA *v.* COLLECTOR OF HOOGHLY [4 B. L. R., A. C., 37: 13 W. R., 13

In the same case on review the lower Appellate Court found, as a fact, that the Magistrate proceeded under Ch XX of the Criminal Procedure Code;

to appear and show cause. COLLECTOR OF HOOGHLY *v.* TARAKNATH MUKHOPADHYA [7 B. L. R., 449: 16 W. R., 63

19. ——— *Judicial act—Right of suit—Liability of Magistrate—Beng. Act*

Affirming decision in CHUNDER NARAIN SING *v.* BROJO BULLUB GOOYEE . . 21 W. R., 126

20. ——— *Abuse of his*

JUDICIAL PROCEEDING.

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s. 84 I. L. R., 17 Bom., 731

See CIVIL PROCEDURE CODE, 1882, s. 2. [I. L. R., 2 Bom., 553

See CRIMINAL PROCEDURE CODES, s. 176 (1872, s. 135) I. L. R., 3 Calc., 742

See CRIMINAL PROCEDURE CODES, s 487. [10 Bom., 73
18 W. R., Cr., 15
I. L. R., 16 Calc., 121, 766
I. L. R., 20 Mad., 283
I. L. R., 14 All., 354
I. L. R., 27 Calc., 452

JUDICIAL PROCEEDING—*concluded.*

See CASES UNDER FALSE EVIDENCE—GENERAL CASES.

See REFORMATORY SCHOOLS ACT, s. 8. [I. L. R., 14 Bom., 381

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION [I. L. R., 19 Mad., 18
I. L. R., 27 Calc., 452

——— **Revision of—**

See CASES UNDER REVISION—CRIMINAL CASES.

See CASES UNDER SUPERINTENDENCE OF HIGH COURT.

JUDICIAL SEPARATION.

See DIVORCE ACT, s. 3, CL. 9. [I. L. R., 4 Calc., 260

See DIVORCE ACT, s. 7. [I. L. R., 22 Calc., 544

See DIVORCE ACT, s. 35. [9 B. L. R., Ap., 6
I. L. R., 5 Calc., 357

See DIVORCE ACT, s. 41 . 6 B. L. R., 818

See PARSIS . I. L. R., 17 Bom., 146

JUDICIAL SUPERINTENDENT OF RAILWAYS.

——— **Dominions of Nizam of Hyderabad**—*Power of Court of Judicial Superintendent of Railways to commit to High Court—Charges preferred by Advocate General—Letters Patent, 1865, cl. 24—European British subjects.* —The provisions of the Code of Criminal Procedure (X of 1882) apply to the Court of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions held at Secunderabad. Where,

ss the Nizam's Court of Bombay to European The Court of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions is not subject to the superintendence of the High Court of Bombay within the meaning of cl. 24 of the Letters Patent, 1865, and a prisoner committed by the former Court for

JUDICIAL SUPERINTENDENT OF RAILWAYS—*concluded.*

trial by the High Court cannot be tried on charges preferred by the Advocate General under that clause QUEEN-EMPRESS *v.* MORTON
[I. L. R., 9 Bom., 288

"JUJMANI RIGHT."

See DECREE—CONSTRUCTION OF DECREE —ENDOWMENT . 20 W. R., 331

JUNGLEBURI TENURE.

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . I. L. R., 14 Calc., 323

See RIGHT OF OCCUPANCY—PERSONS BY WHOM RIGHT MAY BE ACQUIRED
[I. L. R., 14 Calc., 323

JURISDICTION.

JURISDICTION—*continued.*

See CASES UNDER COLLECTOR.

See CASES UNDER CONTRACT ACT, s. 265.

See COSTS—SPECIAL CASES—JURISDICTION . . . Marsh, 311, 375
[1 Ind. Jur., N. S., 38
14 W. R., 312
Bourke, O. C., 131

See CASES UNDER DISTRICT JUDGE, JURISDICTION OF.

See CASES UNDER EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION.

See CASES UNDER HIGH COURT, JURISDICTION OF.

See CASES UNDER INSOLVENT ACT, s. 5.

See INSOLVENT ACT, s. 58.
[I. L. R., 13 Bom., 114

See LETTERS OF ADMINISTRATION.
[1 B. L. R., O. C., 3, 19
8 W. R., 3
4 B. L. R., Ap., 49
1 Hyde, 67
Bourke, Test., 6
11 W. R., 413

JURISDICTION—*continued.*

See CASES UNDER LETTERS PATENT, CL. 12.

See CASES UNDER MAGISTRATE—JURISDICTION OF.

See CASES UNDER MUNSIF, JURISDICTION OF.

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—JURISDICTION

See CASES UNDER SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION.

See CASES UNDER PROBATE—JURISDICTION IN PROBATE CASES.

See CASES UNDER *SUBORDINATE JUDGE,* JURISDICTION OF.

See CASES UNDER VALUATION OF SUIT—APPEALS.

See CASES UNDER VALUATION OF SUIT—SUITS

———— **Illegal exercise of, or failure to exercise—**

See CERTIFICATE OF ADMINISTRATION—CERTIFICATE UNDER BOMBAY REGULATION VIII OF 1827.
[I. L. R., 16 Bom., 708

See CASES UNDER SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

———— **Question of—**

See CASES UNDER APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—JURISDICTION

———— **Transfer or re-arrangement of, in British Territory.**

See CESSION OF BRITISH TERRITORY IN INDIA . . I. L. R., 1 Bom., 367
[I. L. R., 2 All., 1

———— **Want of—**

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES
[I. L. R., 13 All., 575

See SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION.

1. QUESTION OF JURISDICTION.

(*a*) GENERALLY.

1. ———— **Duty of Court to show its jurisdiction on its proceedings.**—The High Court pointed out the necessity of a Court showing its jurisdiction and competency on the face of all its proceedings QUEEN *v.* BIPRO DOSS
[8 W. R., Cr., 45

2. ———— **Jurisdiction on what dependent**—*Nature of claim—Nature of defence.*—The jurisdiction of a Court of justice as to a cause of action depends on the nature of the claim put forward by the plaintiff and the matter involved in it, not on what the defendant may assert by way of defence CHUNDER KOOMAR MUNDUL *v.* BAKER ALI KHAN . . . . . 9 W. R., 598

DALGLEISH *v.* JEEBUN MAHTO . 25 W. R., 130

WATSON *v.* HEDGER . W. R., 1864, Act X, 25

NOBIN CHUNDER ROY CHOWDHRY *v.* BHOWANEE PERSHAD DOSS . . W. R., 1864, Act X, 52

3. ———— **Questions of jurisdiction how governed**—*Statements in plaint and defence—Valuation of suit.*—Questions of jurisdiction, whether with reference to the nature of the suit or with reference to the pecuniary limits of the claim, are matters to be governed by the statements contained in the plaint in the cause. The valuation of the claim as preferred by the plaintiff, and not as set up by the plea in defence, would govern the action, not only for [illegible] also for the [illegible]

[illegible]

4. ———— **Objection to jurisdiction**—*Evidence of jurisdiction—Military Court of Re-* [illegible]

CHUND *v.* SHUMBHOO MULL . . 1 Agra, 222

5 ———— *Appeal on merits of case.*—In a suit for confirmation of possession of an estate under a bill of sale, by setting aside a bond in favour of a third party, and a sale in execution of a decree of the Small Cause Court upon the bond, the first Court found that plaintiff's bill of sale was fraudulent, and that he was not in possession. On appeal the Judge, on an objection taken for the first time in his Court, held that the Small Cause Court had no jurisdiction to try a suit on a bond in which land was hypothecated, and, without going into plaintiff's case, gave him a decree. *Held* that the [illegible] the defendant's [illegible] to prove his [illegible] bill of sale; [illegible] did not arise.

RASH BEHAREE ROY *v.* EZUD BUKSH
[11 W. R., 276

6. ———— **Admission or rejection of jurisdiction by Court**—*Judicial investigation.*—A judicial investigation of allegations and facts sufficient to guide the Court should precede the admission or rejection of jurisdiction NUSRUN BEEBEE *v.* WATSON & CO. . . 3 W. R., 215

See HUREE PERSAD MALEE *v.* KOONJO BEHARY SHAHA . . . Marsh., 99 : 1 Hay, 238

and ISHAN CHUNDER ROY *v.* TARRUCK CHUNDER BANERJEE . . . . 18 W. R., 238

JURISDICTION—*continued.*

1. QUESTION OF JURISDICTION—*continued.*

7. ——— Jurisdiction in supple- [illegible]

KASHEE NATH KOOER *v.* DEB KRISTO RAMANOOJ DOSS . . 16 W. R., 240

8. ——— Distinction between suits, appeals, and applications in matters of jurisdiction.—The distinction made for the purposes of limitation between suits, appeals, and applications by the Limitation Acts has no bearing upon a question of jurisdiction BALAJI RANCHODDAS *v.* MOHANLAL DALSUKHRAM . I. L. R., 5 Bom., 680

9. [illegible] *of A* [illegible] treat [illegible] may [illegible] decisi [illegible] LAKS [illegible]

JOY KISHEN MOOKERJEE *v.* HURREEHUR MOOKERJEE . . . . 6 W. R, 289

10. ——— *Power of Court to decide want of jurisdiction in another Court.*—Although one Court cannot set aside the proceedings of another Court for want of jurisdiction, yet when a [illegible]

11. ——— *Right to object* [illegible]

(*b*) WHEN IT MAY BE RAISED.

12. ——— *Objection not taken in first Court.*—The Court will receive and adjudicate a point of jurisdiction, though not taken below, because as acts done without jurisdiction are acts of no legal effect at all, they must be set aside GOOROO PERSAD ROY *v.* JUGGOBUNDO MOZOOMDAR [W. R., F. B., 15

JUGGOBUNDO MOZOOMDAR *v.* GOOROO PERSAD ROY . . . Marsh., 54: 1 Hay, 228

13. ——— *Objection not taken in first Court.*—The plea of want of jurisdiction can be entertained for the first time at any stage of a suit, provided there is on the record sufficient material to substantiate it. NIDHI LAL *v.* MAZHAR HUSAIN . . . . I. L. R., 7 All., 230

14. ——— *Objection to jurisdiction in Appellate Court.*—An objection to the jurisdiction, the validity of which is patent on the face of the proceedings, can be taken at any stage of the proceedings. SIDHESHWAR PANDIT *v.* HARIHAR PANDIT . . . I. L R., 12 Bom., 155

15. ——— *Time for taking objection* —It is an objection which can be taken at any stage of the case. NOBEEN KISHEN MOOKERJEE *v.* SHIB PERSHAD PATTACK . . 7 W. R, 490

SUSHTEEBUR MOOKERJEE *v.* MACKENZIE [2 W. R., Act X, 76

ANUNDEE KOONWAR *v.* TAKOOR PANDEY [4 W. R., Mis., 21

16. ——— *Objection taken for first time in appeal* —The question of jurisdic- [illegible]

S. C. NYMOODDEE JOARDAR *v.* MONCRIEF [12 W. R., 140

17. ——— *Objection taken on appeal after remand.*—The Court will take notice of a question affecting its jurisdiction even when urged for the first time on appeal after remand. CHOWDRY WAHID ALI *v.* MULLICK INAYET ALI [6 B. L. R., 52: 14 W. R., 288

18. ——— An objection to jurisdiction may be raised at any stage of a suit, even after remand by the High Court in second appeal. KESHAV *v.* VINAYAK [I. L. R., 23 Bom., 22

19. ——— *Objection taken on appeal after remand.*—When the High Court [illegible]

[illegible] Bom., A. C., 137

20. ——— *Objection raised for first time on appeal.*—Where a suit which ought to have been instituted in the Court of the Sudder Ameen was, that Court being closed for the vacation, referred by order of the District Judge for

JURISDICTION—*continued.*

1. QUESTION OF JURISDICTION—*continued.*

trial by the Assistant Judge,—*Held*, on objection taken on appeal, that the District Judge ought to have considered the objection, as involving a question of jurisdiction, though raised before him for the first time during the hearing, and not taken in the memorandum of appeal against the decree of the Assistant Judge MOTILAL RAMDAS *v* JAMNADAS JAVERDAS . . . 2 Bom., 42: 2nd Ed., 40

21. ——— *Objection raised for first time on appeal.*—*A* sued *B* in a Court which had no jurisdiction to entertain the claim. The suit was heard and determined in favour of *B* [illegible] TRIMBAKJI *v.* TOMU VALAD KUTUB [2 Bom., 200: 2nd Ed., 192

22. ——— *Objection raised on special appeal* —Where an objection to the jurisdiction of the Court of first instance was taken for the first time in special appeal, being based on an [illegible] face of the record. BAPUJI AUDITRAM *v.* UMEDBHAI HATHESING . . 8 Bom., A. C., 245

23. ——— *Objection raised after remand on special appeal.*—A plaint presented to a Court not being the Court of the lowest grade competent to try it, was returned to the plaintiff. It was subsequently registered by the same Court in obedience to an order of the District Judge, and a decree was passed in plaintiff's favour. On appeal the defendant pleaded want of jurisdiction in the Court below. The plea was overruled, and the case remanded for re-trial on its merits The Court of first instance again passed a decree in favour of the plaintiff, and the defendant again urged his plea of jurisdiction in appeal, but the Judge declined to go into it a second time. *Held* that, the suit not having been instituted in the Court of the lowest grade competent to try it, the District Judge had no power to direct the Court of first instance to hear the case, and [illegible] [7 Bom., A. C., 79

24. ——— *Objection raised on special appeal—Suing without authority.*—A [illegible]

25. ——— *Objection raised on special appeal—Presumption of jurisdiction.*—*Held* by MARKBY, J., that whenever an objection is made to the want of jurisdiction for the first time in the High Court on special appeal, every presumption should be made in favour of the jurisdiction of the Courts below. ROOKE *v.* PYARI LAL [4 B. L. R., Ap., 43: 11 W. R., 634

26. ——— *Objection to jurisdiction taken at late stage of suit—Procedure.* [illegible] per course is, even if the jurisdiction be doubtful, to proceed to determine the suit. BAGRAM *v.* MOSES [1 Hyde, 284

27. ——— *Procedure on allowance of.*—Where the objection of jurisdiction had been raised and allowed at an early stage of the case, the plaint should have been returned to be presented in the proper Court. KHOOSHAL CHUND *v.* PALMER [1 Agra, 280

KHANDU MORESHVAR v. SHIVJI GORKOJI [5 Bom., A. C., 212

28. ——— *Objection taken on appeal—Costs.*—Where the plea of want of jurisdiction was taken in special appeal, each party was made to bear his own costs NOBEEN KISHEN MOOKERJEE *v.* SHIB PERSHAD PATTACK [7 W. R., 490

29. ——— *Application for execution of decree—Objection apparent in record.* —*Quære*—Whether, upon an application for execution of a decree, an objection, apparent on the face of the record, to the jurisdiction of the Court which made the decree, can be entertained MOHAN ISHWAR *v.* HAKU RUPA . . I. L. R., 4 Bom., 638

30 ——— *Objection to order made without jurisdiction—Objection on appeal from subsequent order.*—A Court has no jurisdiction, reading s. 372 of the Civil Procedure Code with s. 647, to bring in a party after decree and make him a judgment-debtor for the purposes of execution *Gocool Chunder Gossamee* v. *Administrator General of Bengal, I. L. R., 5 Calc., 726,* and *Attorney General* v. *Corporation of Birmingham, L. R., 15 Ch. D., 423,* referred to Where a Court had so acted, by an order which might have been, but was not, made the subject of appeal under [illegible]

31. ——— *Objection that certificate had not been obtained for suit—Suit under Dekkan Agriculturists' Relief Act.*—*Held* that an objection to a suit under the Dekkan Agriculturists' Relief Act, on the ground that a proper

JURISDICTION—*continued.*

1. QUESTION OF JURISDICTION—*continued.*

certificate had not been obtained, could be taken for the first time in second appeal, as it was an objection affecting the jurisdiction of the Courts below NYAMTULA *v.* NANA VALAD FARIDSHA [I. L. R., 13 Bom., 424

32. ———— *Objection as to jurisdiction, first taken in second appeal—Waiver of objection to jurisdiction*—A suit of which the subject-matter was less than R2,500 was instituted in a subordinate Court The Subordinate Judge tried the suit and passed a decree, and an appeal against this decree was entertained and determined by the District Judge without objection taken that the subordinate Court had no jurisdiction to hear and determine the suit On second appeal the objection was taken as above *Held* that the objection could not be waived, but must prevail, and the plaint be returned for presentation in the proper Court VELAIUDAM *v* ARUNACHALA [I. L. R., 13 Mad., 273

33. ———— *Criminal Court—Objection taken for first time on appeal.*—A plea of want of jurisdiction may be taken in the High Court, though not taken below. MACDONALD *v.* RIDDELL . . . 16 W. R., Cr., 79

34 ———— *Criminal Court*

and sentence were confirmed by the Sessions Judge. On application to the High Court to annul the conviction, on the ground that the Magistrate had no jurisdiction to try the case, the Court refused the application, as the question of jurisdiction had not been raised before the Sessions Court. REG. *v.* VISHVANATH DAULATRAV . 4 Bom., Cr., 33

(c) WRONG EXERCISE OF JURISDICTION.

35. ———— **Suit instituted in wrong Court**—*Transfer of suit.*—Where a suit has been instituted in the wrong Court, the defect of jurisdiction is not cured by its transfer to the Court in which it ought to have been brought PACHAONI AWASTHI *v.* ILAHI BAKSH I. L. R., 4 All., 478

36. ———— **Case tried without jurisdiction owing to improper valuation**—*Civil Procedure Code, 1859, s. 6—Irregularity not prejudicing defendant—Valuation of suit.*—Act VIII of 1859, s. 6, occurring in a Code of Civil Procedure regulated the practice of Courts, but did not take away jurisdiction from any Court which,

JURISDICTION—*continued.*

1. QUESTION OF JURISDICTION—*continued.*

suit ought to have been brought. RUSSICK CHUNDER *v* RAM LALL SHAHA . . 22 W. R., 301

37. ———— *Subject-matter—Act VI of 1869, s. 2*

jurisdiction, the jurisdiction itself continues, whatever the event of the suit. And this is so, notwithstanding a *bonâ fide* error in the estimate made by the plaintiff. But the plaintiff cannot oust the Court of its jurisdiction by making unwarrantable

38. ———— **Suit brought with jurisdiction**—*Suit brought without authority—Subse-*

taken and allowed,—*Held* that the defect of jurisdiction could not be cured by the production of a written authority on special appeal. SHIVRAM VITHAL *v.* BHAGIRTHIBAI . 6 Bom., A. C., 20

39. ———— **Suit brought under honest misinformation**—*Judge trying suit over which he had no cognizance*

40. ———— **Suit against Sardar**—*Retrospective effect of appointment.*—Creation of the

SAHEB PATVARDHAN *v.* APPA . 12 Bom., 13

41. ———— **Exercise of jurisdiction by Court wrongly, owing to negligence of party.**—Where jurisdiction over the subject-matter exists, requiring only to be invoked in the right way, the party who has invited or allowed the Court to exercise it in a wrong way cannot afterwards

NARO HARI *v.* ANPURNABAI [I. L. R., 11 Bom., 160 note

JURISDICTION—*continued.*

1. QUESTION OF JURISDICTION—*continued.*

trial by the Assistant Judge,—*Held*, on objection [illegible]

Judge MOTILAL RAMDAS v. JAMNADAS JAVERDAS . . . 2 Bom., 42: 2nd Ed., 40

21. ——— *Objection raised for first time on appeal.*—A sued B in a Court which had no jurisdiction to entertain the claim. [illegible]

TRIMBAKJI v. TOMU VALAD KUTUB [2 Bom., 200: 2nd Ed., 192

22. ——— *Objection raised on special appeal.*—Where an objection to the jurisdiction of the Court of first instance was taken for the first time in special appeal, being based on an [illegible]

face of the record. BAPUJI AUDITRAM v. UMEDBHAI HATHESING . . 8 Bom., A. C., 245

23. ——— *Objection raised after remand on special appeal.*—A plaint presented to a Court not being the Court of the lowest grade competent to try it, was returned to the plaintiff. It was subsequently registered by the same Court in obedience to an order of the District Judge, and a decree was passed in plaintiff's favour. On appeal the defendant pleaded want of jurisdiction in the Court below The plea was overruled, and the case remanded for re-trial on its merits The Court of first instance [illegible]

to try it, the District Judge had no power to direct the Court of first instance to hear the case, and [illegible]

[7 Bom., A. C., 79

24. ——— [illegible]

JURISDICTION—*continued.*

1. QUESTION OF JURISDICTION—*continued.*

25. ——— *Objection raised* [illegible]

Courts below. ROOKE v. PYARI LAL [4 B. L. R., Ap., 43: 11 W. R., 634

26. ——— *Objection to ju-* [illegible]

[1 Hyde, 284

27. ——— *Procedure on al-* [illegible]

[1 Agra, 280

KHANDU MORESHVAR v. SHIVJI GORKOJI [5 Bom., A. C., 212

28. ——— *Objection taken on appeal—Costs.*—Where the plea of want of jurisdiction was taken in special appeal, each party was made to bear his own costs. NOBEEN KISHEN MOOKERJEE v. SHIB PERSHAD PATTACK [7 W. R., 490

29. ——— *Application for* [illegible]

v. HAKU RUPA . . I. L. R., 4 Bom., 638

30 ——— *Objection to order made without jurisdiction—Objection on appeal from subsequent order.*—A Court has no jurisdiction, reading s. 372 of the Civil Procedure Code with s. 647, to bring in a party after decree and make [illegible]

[illegible] was not made the subject of appeal under s. 588 of the Code [illegible]

31. ——— *Objection that certificate had not been obtained for suit—Suit under Dekkan Agriculturists' Relief Act.*—*Held* that an objection to a suit under the Dekkan Agriculturists' Relief Act, on the ground that a proper

JURISDICTION—*continued.*

1 QUESTION OF JURISDICTION—*continued.*

certificate had not been obtained, could be taken for the first time in second appeal, as it was an objection affecting the jurisdiction of the Courts below. NYAMTULA *v* NANA VALAD FARIDSHA [I. L. R., 13 Bom., 424

32 ——— *Objection as to jurisdiction, first taken in second appeal—Waiver of objection to jurisdiction.*—A suit of which the subject-matter was less than R2,500 was instituted in a subordinate Court. The Subordinate Judge tried the suit and passed a decree, and an appeal against this decree was entertained and determined by the District Judge without objection taken that the subordinate Court had no jurisdiction to hear and determine the suit. On second appeal the objection was taken as above *Held* that the objection could not be waived, but must prevail, and the plaint be returned for presentation in the proper Court VELAYUDAM *v* ARUNACHALA [I. L. R., 13 Mad., 273

33. ——— *Criminal Court.—Objection taken for first time on appeal.*—A plea of want of jurisdiction may be taken in the High Court, though not taken below MACDONALD *v* RIDDELL . . 16 W. R., Cr., 79

34. ——— *Criminal Court.*—The case of a prisoner accused of the offence of attempting to cheat by personation was referred for trial by the District Magistrate to a Magistrate, who, without a complaint being made to him, convicted and sentenced the prisoner. The conviction and sentence were confirmed by the Sessions Judge. On application to the High Court to annul the conviction, on the ground that the Magistrate had no jurisdiction to try the case, the Court refused the application, as the question of jurisdiction had not been raised before the Sessions Court. REG. *v.* VISHVANATH DAULATRAV . 4 Bom., Cr., 33

(*c*) WRONG EXERCISE OF JURISDICTION.

35. ——— **Suit instituted in wrong Court**—*Transfer of suit* —Where a suit has been instituted in the wrong Court, the defect of jurisdiction is not cured by its transfer to the Court in which it ought to have been brought. PACHAONI AWASTHI *v.* ILAHI BAKSH I. L. R , 4 All., 478

36. ——— **Case tried without jurisdiction owing to improper valuation**—*Civil Procedure Code, 1859, s. 6—Irregularity not prejudicing defendant—Valuation of suit.*—Act VIII of 1859, s. 6, occurring in a Code of Civil [illegible]

JURISDICTION—*continued.*

1. QUESTION OF JURISDICTION—*continued.*

suit ought to have been brought. RUSSICK CHUNDER *v.* RAM LALL SHAHA . . 22 W. R., 301

37. ——— *Subject-matter—Act XIV of 1869, s. 25.*—What *primâ facie* [illegible]

[illegible] over the event of the suit. And this is so, notwith- [illegible]

38. ——— **Suit brought with jurisdiction**—*Suit brought without authority—Subsequent sanction, Effect of*—Where a suit was brought [illegible]

[illegible] written authority on special appeal. SHIVRAM VITHAL *v.* BHAGIRTHIBAI . 6 Bom , A. C., 20

39. [illegible]

[I. L. R., 7 Bom., 448

40. ——— **Suit against Sardar**—*Retrospective effect of appointment.*—Creation of the [illegible]

SAHEB PATVARDHAN *v.* APPA . 12 Bom., 13

41 ——— [illegible]

[illegible] exercise it in a wrong way cannot afterwards challenge the legality of the proceedings due to his own invitation or negligence. But if there is no [illegible]

NARO HARI *v.* ANPURNABAI [I. L. R., 11 Bom., 160 note

JURISDICTION—*continued.*

1. QUESTION OF JURISDICTION—*continued.*

(*d*) CONSENT OF PARTIES AND WAIVER OF OBJECTION TO JURISDICTION.

42. ——— Consent of parties—*Power to give Court jurisdiction by consent.*—Where a Court has no jurisdiction, no consent of parties can give it jurisdiction AUKHIL CHUNDER SEN ROY *v.* MOHINY MOHUN DASS [I. L. R., 5 Calc., 489 · 4 C. L. R., 491

BHOOPENDRO NATH CHOWDHRY *v.* KALEE PROSUNNO GHOSE . . . 24 W. R., 205

43. ——— *Agreement of parties that suit shall be brought in Court which has no jurisdiction.*—Jurisdiction cannot be given or taken away by the agreement of parties. *Held*, therefore, that a clause in a bill of lading vesting

44. ——— *Suit brought not in competent Court—Case transferred by consent*

the other hand, in a suit tried by a competent Court, the parties having without objection joined issue and gone to trial upon the merits, cannot subsequently dispute the jurisdiction on the ground of irregularities in the initial procedure which, if objected to at the time, would have led to the dismissal of the suit A suit, having been instituted in a Court not of competent jurisdiction, was transferred with the consent of parties to a Court which was competent, but the defence of jurisdiction was set up before the issues were fixed, and was afterwards insisted on throughout. *Held* that in the single fact that the defendant had personally concurred in the transfer, there had ... this defence, ... on the ground ... LEDGARD *v.* ... 9 All., 191 [L. R., 13 I. A., 134

45. ——— *Effect of consent—Land situated beyond British territories.*—The Raja of Dangradra, an independent Chief, sued the Government of Bombay for a village which he described ... territory. ... the suit ... dispute w...

Court. The plaint was accordingly amended, and the District Court decided the case on the merits in favour of the plaintiff. The High Court, however, finding that the amendment did not alter the original statement in the plaint regarding the situation of the village, a ... and argument ... the village w... annulled the ... pressed their ... decided on the merits, the Court acting on the rule of law that no consent of parties can give to the Court a jurisdiction which it does not possess over the subject-matter of the suit. GOVERNMENT OF BOMBAY *v.* RANMALSINGJI AMARSINGJI [9 Bom., 242

46. ——— *Consent to jurisdiction—Waiver of objection to jurisdiction.*—The plaintiff sued three defendants on a bond alleged to have been executed by them to the plaintiff.

but his objection was overruled, and a decree was made against all three defendants. On appeal the lower Appellate Court reversed the decree, holding

or acquiescence, did not give the lower Court any jurisdiction. Consent or acquiescence does not give jurisdiction to a Court of limited jurisdiction, though the waiver may be sufficient in a Court of superior jurisdiction The consent which waives an irregularity, or allows the Court to exercise a power not vested in it, cannot by itself give the authority itself as an attribute of the Court, which must directly or indirectly emanate from the Sovereign. BABAJI *v.* LAKSHMIBAI . I. L. R., 9 Bom., 266

47. ——— *Hearing of evidence and decision by different Judges*—Where the Judge who decides the case is not the Judge who heard the witnesses and received the evidence, the defect may be cured by the assent of the parties. MOHAMED *v.* OOMDAH KHANUM 13 W. R., 184

48. ——— *Bengal Civil Courts Act (VI of 1871), s. 17—Close holiday—Proceeding on civil side of District Court during vacation—Irregularity*—S 17 of the Bengal Civil Courts Act (VI of 1871) was framed in the

decline to proceed with any inquiry, trial, or other matter on the civil side of his Court; and any party to any judicial proceeding could successfully object to any such inquiry being proceeded with, and, in the event of any such inquiry having been proceeded with in his absence and without his consent, would

JURISDICTION—*continued*

1. QUESTION OF JURISDICTION—*continued.*

be entitled to have the proceeding set aside as irregular, probably in any event, and certainly if his interests had been prejudiced by such irregularity. But, at the furthest, the entertaining and deciding upon a matter within the ordinary jurisdiction of the Court on a close holiday is an irregularity the right to which can be waived by the conduct of the parties, and a party who, on a close holiday, does attend, and without protest takes part in a judicial proceeding, cannot afterwards successfully dispute the jurisdiction of the Judge to hear and determine such matter *Bennett* v. *Potter*, 2 C & J, 622, *Andrews* v. *Elliott*, 5 E. & B, 502 6 E & B, 38, and *Basram Maton* v. *Sahib-un-nissa*, I. L R, 3 All., 333, referred to. RAM DAS CHAKARBATI v. OFFICIAL LIQUIDATOR OF THE COTTON GINNING COMPANY

I. L R., 9 All, 366

49. ——— *Transfer of case—Objection to jurisdiction subsequently taken.*—A suit having been instituted in the Court of the Subordinate Judge who was incompetent to try it, the case was transferred by consent of parties to the Court of the District Judge for convenience of trial. *Held* that such transfer was incompetent, and that such consent did not operate as a waiver of the plea to the jurisdiction which was taken in the defendant's written statement and subsequently insisted on. LEDGARD v. BULL . . L. R., 13 I. A., 134

I. L. R., 9 All., 191

50. ——— *Objection to jurisdiction after consent.*—In a cause which a Judge is competent to try, if the parties without [illegible] dismissal of the suit. But when the Judge has no jurisdiction over the subject-matter of a suit, the parties cannot by their mutual consent convert it into a proper judicial process. *Ledgard* v. *Bull*, L. R, 13 I. A., 134, referred to and followed. MINAKSHI NAIDU v. SUBRAMANYA SASTRI

I. L R., 11 Mad., 26

L. R., 14 I. A., 160

KUMARASAMI REDDIAR v. SUBBARAYAR REDDIAR

I. L. R., 23 Mad., 314

51. ——— **Waiver of jurisdiction**—*Consent of parties.*—An objection to jurisdiction cannot be waived by the parties LALMONEY DOSSEE v. JADDOONAUTH SHAW 1 Ind. Jur., N. S., 319

Contra, see TICKUM LALL DOSS v. MACARTHUR

1 W. R., 279

52. ——— *Omission to raise plea of jurisdiction.*—In a suit in a Munsif's Court on a right of pre-emption, in which plaintiff [illegible] Courts, to come up to the High Court in special appeal. It was remanded on a question of fact and came up again in special appeal, when the point was raised for the first time (though not taken in the [illegible]

53. ——— *Omission to raise plea of jurisdiction.*—*Held* that, if a defendant who appears in a suit chooses not to raise the plea of want of jurisdiction, he must be taken to [illegible]

KANDOTH MAMMI v. NEELAN CHERAYIL ABDU KALANDAN . . . . . 8 Mad., 14

54. ——— *Defendant not taking plea of jurisdiction, Effect of.*—Where a Court has no inherent jurisdiction over the subject-matter of a suit, the parties cannot by their mutual consent give it jurisdiction A suit of a nature cognizable by a Court of Small Causes alone was [illegible] Held that both the lower Courts had no jurisdiction to deal with the suit. [illegible]

I. L. R., 13 Bom., 650

55. ——— [illegible] within the period named, the property might be sold. His prayer was granted. He then raised the plea that the Court which made the decree had no jurisdiction to entertain the suit. *Held* that, having pleaded in the Court below on the assumption that the decree was a money-decree which the Court which made it

JURISDICTION—*continued.*

1. QUESTION OF JURISDICTION—*continued.*

(*d*) Consent of Parties and Waiver of Objection to Jurisdiction.

42. ——— Consent of parties—*Power to give Court jurisdiction by consent.*—Where a Court has no jurisdiction, no consent of parties can give it jurisdiction. Aukhil Chunder Sen Roy *v.* Mohiny Mohun Dass

[I. L. R., 5 Calc., 489: 4 C. L. R., 491

Bhoopendro Nath Chowdhry *v* Kalee Prosunno Ghose . . . . **24 W. R., 205**

43. ——— *Agreement of parties that suit shall be brought in Court which has no jurisdiction.*—Jurisdiction cannot be given or taken away by the agreement of parties. *Held,* therefore, that a clause in a bill of lading vesting jurisdiction in a Court which has no jurisdiction can have no legal effect or be pleaded in bar of a suit brought in a Court which has jurisdiction. Crawley *v.* Luchmee Ram . . . **1 Agra, 129**

44. ——— *Suit brought not* [illegible]

result that, having themselves constituted it their [illegible]

that it was not competently brought Ledgard *v* Bull . . . . . **I. L. R., 9 All., 191**

[L R., 13 I. A., 134

45. ——— *Effect of consent—Land situated beyond* [illegible]

[illegible] Court. The plaint was accordingly amended, and the District Court decided the case on the merits in favour of the plaintiff. The High Court, however, finding that the amendment did not alter the original statement in the plaint regarding the situation of the village, a[illegible]

and argument [illegible]

the village w[illegible]

annulled the [illegible]

pressed their [illegible]

decided on the merits, the Court acting on the rule of law that no consent of parties can give to the Court a jurisdiction which it does not possess over the subject-matter of the suit. Government of Bombay *v* Ranmalsingji Amarsingji

[9 Bom., 242

46. ——— *Consent to jurisdiction—Waiver of objection to jurisdiction.*—The plaintiff sued three defendants on a bond alleged to have been executed by them to the plaintiff. [illegible]

[illegible] but his objection was overruled, and a decree was made against all three defendants On appeal the lower Appellate Court reversed the decree, holding that the Court of first instance had no jurisdiction. The plaintiff preferred a second appeal, and contended that the first and third defendants had consented to the jurisdiction of the Court, and that the decree was binding as against them. [illegible]

jurisdiction Consent or acquiescence does not give [illegible]

[illegible] or allows the Court to exercise a power not vested in it, cannot by itself give the authority itself as an attribute of the Court, which must directly or indirectly emanate from the Sovereign. Babaji *v.* Lakshmibai . **I. L. R., 9 Bom., 266**

47. ——— *Hearing of evidence and decision by different Judges.*—Where the Judge who decides the case is not the Judge who heard the witnesses and received the evidence, the defect may be cured by the assent of the parties. Mohamed *v.* Oomdah Khanum **13 W. R., 184**

48. ——— *Bengal Civil Courts Act (VI of 1871), s. 17—Close holiday—Proceeding on civil side of District Court during vacation—Irregularity*—S. 17 of the Bengal Civil Courts Act (VI of 1871) was framed in the [illegible]

[illegible] with any inquiry, trial, or other matter on the civil side of his Court; and any party to any judicial proceeding could successfully object to any such inquiry being proceeded with, and, in the event of any such inquiry having been proceeded with in his absence and without his consent, would

JURISDICTION—*continued*

1. QUESTION OF JURISDICTION—*continued*.

be entitled to have the proceeding set aside as irregular, probably in any event, and certainly if his interests had been prejudiced by such irregularity But, at the furthest, the entertaining and deciding upon a matter within the ordinary jurisdiction of the Court on a close holiday is an irregularity the right to which can be waived by the conduct of the parties; and a party who on a close holiday, does attend, and without protest takes part in a judicial proceeding, cannot afterwards successfully dispute the jurisdiction of the Judge to hear and determine such matter *Bennett* v. *Potter, 2 C. & J., 622*, *Andrews* v. *Elliott, 5 E. & B., 502 6 E. & B, 38*, and *Bisram Maton* v. *Sahib-un-nissa, I L. R., 3 All., 333*, referred to. RAM DAS CHAKARBATI v. OFFICIAL LIQUIDATOR OF THE COTTON GINNING COMPANY

I. L. R., 9 All., 366

49. ———— Transfer of case —*Objection to jurisdiction subsequently taken*.— A suit having been instituted in the Court of the Subordinate Judge who was incompetent to try it, the case was transferred by consent of parties to the Court of the District Judge for convenience of trial. *Held* that such transfer was incompetent, and that such consent did not operate as a waiver of the plea to the jurisdiction which was taken in the defendant's written statement and subsequently insisted on. LEDGARD v. BULL . L. R., 13 I. A., 134

I. L. R., 9 All., 191

50. ———— *Objection to jurisdiction after consent*.—In a cause which a Judge is competent to try, if the parties without

[illegible]

dismissal of the suit. But when the Judge has no jurisdiction over the subject-matter of a suit, the parties cannot by their mutual consent convert it into a proper judicial process. *Ledgard* v. *Bull, L. R., 13 I. A., 134*, referred to and followed. MINAKSHI NAIDU v. SUBRAMANYA SASTRI

I. L. R., 11 Mad., 26
L. R., 14 I. A., 160

KUMARASAMI REDDIAR v. SUBBARAYAR REDDIAR

I. L. R., 23 Mad., 314

51. ———— Waiver of jurisdiction—*Consent of parties*.—An objection to jurisdiction cannot be waived by the parties. LALMONEY DOSSEE v. JADDOONAUTH SHAW 1 Ind. Jur., N. S., 319

Contra, see TICKUM LALL DOSS v. MACARTHUR

1 W. R., 279

52. ———— *Omission to raise plea of jurisdiction*.—In a suit in a Munsif's Court on a right of pre-emption, in which plaintiff undervalued his claim, the defendant, without objecting to the jurisdiction, allowed the case to go to trial, and, after passing through the subordinate Courts, to come up to the High Court in special appeal. It was remanded on a question of fact and came up again in special appeal, when the point was raised for the first time (though not taken in the petition of appeal) that the suit was not cognizable by the Munsif, and therefore that all that had been done had been done without jurisdiction. *Held* that the defendant was not at liberty to waive jurisdiction, and that the objection must be allowed to be taken even at this late stage *Held* that, the suit having been beyond the Munsif's jurisdiction, his judgment was not legal, and his decree, in the eye of the law, no decree at all and of no legal effect. NAUKHOO SINGH v. TOPAN SINGH 14 W. R., 228

53. ———— *Omission to raise plea of jurisdiction*.—*Held* that, if a defendant who appears in a suit chooses not to raise the plea of want of jurisdiction, he must be taken to

[illegible]

KANDOTH MAMMI v. NEELAN CHERAYIL ABDU KALANDAN . . . . . 8 Mad., 14

54. ———— *Defendant not taking plea of jurisdiction, Effect of*.—Where a Court [illegible] matter [illegible] consent [illegible] cogniza[illegible] brought in the Court of a Joint Subordinate Judge. The defendant objected to the jurisdiction of the Court, but his objection was overruled. The suit was, however, dismissed on the merits. On appeal before the District Judge the defendant did not

[illegible]

that Court with a jurisdiction not given to it by law. LADLI BEGAM v. RAJE RABIA

I. L. R., 13 Bom., 650

55. ———— *Agreement to submit to execution of decree—Jurisdiction*.— A decree-holder, with a certificate showing that satis-

[illegible]

JURISDICTION—*continued.*

1. QUESTION OF JURISDICTION—*continued.*

had jurisdiction to make, it was not open to the judgment-debtor's pleader to urge that it was not a money-decree. RADHA GOBIND GOSSAMI *v.* OOMA SUNDUREE DOSSIA . . . 24 W. R., 363

56. ——————— *Omission to raise objection to execution of decree.*—Certain property

57. ——————— *Omission to raise plea till late stage of case—Right to raise, on*

peal was preferred in which objection was raised on the score of jurisdiction. *Held* that the objection could not be taken at this stage, as the defendant had not chosen to appeal against the District Judge's order of 14th June 1872. KOYLASH CHUNDER GHOSE *v.* ASHRUF ALI . . . 22 W. R., 101

RAJ NARAIN *v.* ROWSHAN MULL 22 W. R., 126

58. ——————— A suit for rent having been brought in the Beerbhoom Collectorate and decreed, the case was referred in execution to the Collector of Burdwan, within whose jurisdiction the property lay. The tenure was sold by the Deputy Collector of the latter district and purchased by the decree-holder. Appeals were made to the Collector and the Commissioner by the judgment-debtor, and were rejected by both officers. The judgment-debtor

had passed, it was too late to raise the question of jurisdiction. OOMA SOONDUREE DOSSEE *v.* BIPIN BEHAREE ROY . . 13 W. R., 292

59. ——————— *Civil Procedure Code, 1882, s. 20.*—In 1876, *K* sued *M* on a bond,

JURISDICTION—*continued.*

1. QUESTION OF JURISDICTION—*concluded.*

Act in 1874, and that the compensation, R460 (claimed by *M*'s mother, who sold the land to the company), was lodged in the treasury of Kumbakonam in the name of *M*'s mother. *K* having applied to the subordinate Court for an order for payment out of this sum, the Court, by order dated 28th

jurisdiction. *Held* that the suit was for money, and that *V*, not having applied to stay proceedings under s. 20 of the Civil Procedure Code, must be held to have acquiesced in the jurisdiction of the Court. VENKATA VIRARAGAVA AYYANGAR *v.* KRISHNASAMI AYYANGAR . . . I. L. R., 6 Mad., 344

60. ——————— *Subsequent plea of, by same party in another case.*—The fact of a

CHUNDER MANIKKYA *v.* RAJ COOMAR NOBODEEP CHUNDER DEB BURMONO

[I. L. R., 9 Calc., 535: 12 C. L. R., 465

61. ——————— *Waiver of want of jurisdiction—Civil Procedure Code, s. 25, Order made under, without notice to the party not applying.*

notice to the defendants of the application made under s. 25 of the Code of Civil Procedure was im-

JURISDICTION—*continued.*

2 CAUSES OF JURISDICTION.

(a) DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.

62. ——— Dwelling-place—*Animus revertendi*—Whatever the purpose for which a man may go to another jurisdiction than that in which his family resides, if there is an *animus revertendi*, the family dwelling-house must be considered to be his dwelling-place. KASHEE NATH KOOER *v.* DEB KRISTO RAMANOOJ DOSS . . 16 W. R., 240

63 — — *Civil Procedure Code, 1859, s. 5—Act XXIII of 1861, s. 4—Residence—Soldier with his regiment*—The fixed and

1861. FATIMA BEGAM *v.* SAKINA BEGAM [I. L. R., 1 All., 51

64. ——— Occasional residence.—Occasional residence will not bring a defendant within the jurisdiction; he must be a fixed inhabitant of the district in which the suit is brought. ZALEM TEWAREE *v.* GOBINDGEER GOSSAIN [1 Ind. Jur., O. S., 85

S. C. LELIM TEWAREE *v.* GOBINDGEER GOSSAIN [Marsh., 64 : 1 Hay, 132

65. ——— Dwelling—*Letters Patent, cl. 12—Temporary residence—Habits, calling, and*

jurisdiction. EMRIT LALL *v.* KIDD [Cor., 46 : 2 Hyde, 117

66. ——— *Letters Patent,*

VABJI FRAMJI *v.* WALLACE . . 1 Bom., 113

67. ——— *Letters Patent, cl. 12—Leave of Court.*—H died at Ajmere, his representative then and at the time of suit brought

JURISDICTION—*continued.*

2 CAUSES OF JURISDICTION—*continued.*

68 ——— *Addition of a defendant residing out of jurisdiction in a suit in which leave to sue has been already obtained—Letters Patent, 1865, cl. 12—Fresh leave to sue such new defendant necessary*—Where a defendant is added who does not reside within the jurisdiction of the High Court, and against whom the cause of action has not arisen wholly within that jurisdiction, leave must be obtained under cl. 12 of the Letters Patent, 1865, even if leave was obtained when the suit was originally filed. RAMPARTAB SAMRATHRAI *v.* FOOLIBAI [I. L. R., 20 Bom., 767

69. ——— *Civil Procedure Code, 1859, s. 5—What constitutes "dwelling" within the meaning of that section.*—A testator be-

70. ——— *Letters Patent, 1865, cl. 12—"Dwell"—"Carry on business"—"Personally working for gain."*—The plaintiff claimed to be the acharya or high priest of the

JURISDICTION—*continued.*

2 CAUSES OF JURISDICTION—*continued.*

Vaishnav community and the Maharaj Tikait of Shri Nathji at Nathdwara in the territories of the Maharana of Oodeypore. In 1876, he was deported from the

He now sued to recover this property from the defendant. The defendant pleaded that the High Court of Bombay had no jurisdiction to try the suit. It ap-

treasurer, a munim, and mehtas and servants were

the owner of such shrines The defendant had similar establishments in other places in the Bombay Presidency. The offerings collected in them were transmitted to the Bombay pedi and dealt with there.

the unpaid purchase-money. In 1889, when the defendant visited Bombay, he lived in this house, but he sold it in the same year shortly before he returned to Nathdwar The defendant had never been in Bombay until 1889. In that year, in accordance

that the Court had jurisdiction under cl 12 of the Letters Patent, 1865. *Held* that at the date of the institution of the suit the defendant was neither dwelling, nor carrying on business, nor personally working for gain, in Bombay, and that the Court had no jurisdiction. GOSVAMI SHRI 108 *v.* GOVARDHANLALJI . . . . I. L. R., 14 Bom., 541

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*continued.*

71. ———— *Residence for temporary purpose—Receipt of presents by high priest of temple—Office for receiving presents—Purchase of house—Letters Patent, High Court, cl. 12.*—The word "dwell" must be construed with reference to the particular object of the enactment in which it occurs. Residence in Bombay merely for a temporary purpose is not to "dwell" there so as to give jurisdiction to the High Court under cl. 12 of the Letters Patent, 1865. *Held* that the mere fact that the defendant had purchased the house which he occupied during a temporary visit to Bombay afforded no inference of an intention to dwell there. A defendant who was the acharya or high priest of the Vaishnav community and the Maharaj Tikait of Shri Nathji at Nathdwara had a pedi, or place of business, in Bombay where devotees paid in any presents they intended to offer him. *Held* that this did not amount to "carrying on business" so as to give the High Court jurisdiction under cl 12 of the Letters Patent, 1865. The defendant, when in Bombay, was invited by his devotees and pupils to their houses, where he was treated as an incarnation of the

GOSWAMI SHRI 108 SHRI GIRDHARIJI *v.* GOVARDHANLALJI GIRDHARIJI **I. L. R., 18 Bom., 290**

Held, on appeal to the Privy Council, that the expression "carry on business" in cl 12 of the Letters Patent, 1865, is intended to relate to business in which a man may contract debts, and ought to be liable to be sued by persons having business transactions with him. The defendant, who was an acharya of the Vaishnav community and was head of their institution at Nathdwara in Udepur, where he usually resided, was, when this suit was brought, in Bombay for a time He had in the latter place a treasurer and other servants employed in an establishment for the collection and entry of gifts made by devotees; and there also donations, made in like establishments elsewhere, were received for transmission to Nathdwara. The defendant also, while in Bombay, accepted offerings on ceremonial visits made or received by him personally, but no bargain for the amount was made beforehand *Held* by the Privy Council that in the above transactions there was no "carrying on business" within cl. 12 of the Letters Patent, 1865. GOSWAMI SHRI 108 SHRI GIRDHARIJI *v.* GOVARDHANLALJI GIRDHARIJI

[I. L. R., 18 Bom., 294
L. R., 21 I. A., 13

72. ———— *Suit for rent of land in Gwalior, defendant being resident in British India—Place where defendant resides—Civil Procedure Code (1882), s. 17.*—*Held* that a suit by a lessor against his lessee to recover rent

JURISDICTION—*continued.*

2 CAUSES OF JURISDICTION—*continued*

Gurdyal Singh v. Raja of Faridkot, I. L. R., 22 Calc., 222, referred to. BHUJBAL v. NATHUJI

[I. L. R., 19 All., 450

73. ———— *Immoveable property—Civil Procedure Code (Act XIV of 1882), s. 16—Varshasans charged on villages in Nizam's territory and paid in the same territory—Suit to establish title to a share in such varshasans*—Plaintiffs filed a suit in the Court of the first class Subordinate Judge at Nasik to establish their right to a certain share in two varshasans (annual allowances) The allowances were charged on the revenues of two villages in the Nizam's territory, and paid to the defendants by the treasury officers at Aurangabad in the same territory The plaintiffs alleged that the varshasans were granted to a common ancestor of the parties and enjoyed as joint ancestral property, while the defendants contended that the allowances were granted to their grandfather as his exclusive property to descend to his heirs, and that plaintiffs had no right to share in them *Held* that the Nasik Court had no jurisdiction to try the suit. The varshasans were immoveable property, and there being a *bonâ fide* claim of title to them, the claim should be determined according to the law in force in the Nizam's

ances in a British Court, merely because the defendants happened to be residents in British territory KESHAV v. VINAYAK I. L. R., 23 Bom., 22

74 ———— *Civil Procedure Code (1882), s. 16—Relief to be obtained by per-*

therefore that a suit for the determination of an interest in immoveable property filed in a Court within

[I. L. R., 23 Bom., 756

75. ———— *Suit to establish right to a share in certain income—Property*

equity in England are, and always have been, Courts of conscience, operating *in personam* and not *in rem*; and in the exercise of this personal jurisdiction they have always been accustomed to compel the performance of contracts and trusts as to subjects which were not either locally or *ratione domicilii* within their jurisdiction." The jurisdiction of Courts in India is governed and must be ascertained by the same principles except so far as they may be at variance with legislative enactment. *Ewing v. Orr Ewing, L. R., 9 Ap. Ca., 34,* followed. The plaintiff sued in the Court at Nasik in British India to estab-

76 ———— *Residence alter-*

KRISTO GHOSE . . . . . Cor., 24

77. ———— *Temporary residence for pleasure—Person without residence elsewhere.*—That a temporary residence in Calcutta, for purposes of pleasure, with intention of remaining there a month, without having at the time a residence out of the jurisdiction, is a sufficient dwelling within the jurisdiction to satisfy cl. 12 of the Charter. MORRIS v. BAUMGARTEN

[Bourke, O. C., 127 : Cor., 152

MATHEW v. TULLOCH . . 4 N. W., 25

78. ———— Residence out of jurisdiction—*Bringing suit for damages by collision.*—One who sues for damages caused by a collision

79. ———— Carrying on business—*Suit against Government—Residence or place of business of Government.*—In a suit for specific per-

jurisdiction, but that he may sue or be sued in such Court or Courts as may have jurisdiction in respect of

JURISDICTION—*continued.*

2 CAUSES OF JURISDICTION—*continued.*

each particular cause of action. RUNDLE *v.* SECRETARY OF STATE . . . 1 Hyde, 37

80 ———— *Suit against Government—Civil Procedure Code, 1859, s. 5—Letters Patent, cl. 12.—Semble*—The jurisdiction to entertain suits against the Government under s 5 of Act VIII of 1859 exists only where the cause of action arose Under cl 12 of the Letters Patent (1862) constituting the High Court of Madras, the Government must be considered as carrying on business at the place where its members exercise all the functions of Government. The words "carry on business" in that clause imply a personal and regular attendance to business within the local limits. A suit will not lie in the High Court against the Collector of Madras residing and carrying on business at Sydapet in respect of matters arising in Chingleput, though his Deputy Collector carried on business within the local limits, and the orders and proceedings in reference to the matters in question were in his name of office as Collector of Madras. SUBBARAYA MUDALI *v* GOVERNMENT 1 Mad., 286

81. ———— *Letters Patent, cl 12—Secretary of State for India in Council.*—The words "cause of action" in cl 12 of the Letters Patent, 1865, ...

limits of the Court. The work carried on by the Government of India in governing the country, in salt, opium, etc, although carried on by Government officers in charge of the several departments of Government, is not, properly speaking, business carried on by Government, but work carried on for the benefit of the Indian Exchequer. The words of cl 12 "carry on business ...

[I. L. R., 14 Calc., 256

82. ———— *Civil Procedure Code, 1877, s 17—Residing—Onus probandi.*—Where the cause of action arises in the jurisdiction of a Court other than that in which the suit is brought, the plaintiff must, under the provisions of s. 17 of Act X of 1877, show that the defendant at the time of the commencement of the suit actually and voluntarily resided or carried on business, or personally worked for gain, within the jurisdiction of the Court in which the suit was brought MODHU SUDAN CHOWDHRY *v.* COCHRANE . 6 C. L. R., 417

83. ———— *Letters Patent, cl. 12—Temporary stay and office in Calcutta.*— ...

chartered according to agreement, the boats, when beyond the jurisdiction of the Court, sustained great damage by reason of gross negligence on the part of ...

...NERJEE *v* COLLINS . . . . 2 Hyde, 79

84. ———— *Letters Patent, cl. 12—Temporary residence.*—*M*, residing at Meerut, sued *B* in respect of a cause of action which did not arise in Calcutta. It appeared that *B* usually resided at Mussoorie from March to October, but ...

Court Charter. MORRIS *v.* BAUMGARTEN [Bourke, O. C., 127 : Cor., 152

MATHEW *v.* TULLOCH . . . 4 N. W., 25

85. ———— *Letters Patent,* ...

... 3 ..., 143

86. ———— *Letters Patent, cl. 12.*—The defendant resided and carried on business in London, and employed *C F & Co.* as their commission agent in Bombay. The plaintiffs at Bombay executed a power-of-attorney in favour of the defendants to enable him to sue in England for certain ...

... defendants ... it was held that ... be accepted by the ...

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*continued.*

as it does not carry on business within the local jurisdiction of such High Court within the meaning of the above clause of the Letters Patent KHIMJI CHATURBHUJ v. FORBES 8 Bom., O. C., 102

87. ———— *Letters Patent, 1865, cl. 12—Suit on hundi.*—The defendant, who resided and carried on business at Patna, was in the habit, several times in the course of the year, of sending goods to Calcutta by boat and coming down himself by rail, he received his goods and remained in Calcutta until he sold them He had no place of business, nor any gomastah or agent of his own in Calcutta, but used to sell the goods himself, and put up sometimes at one arut, sometimes at another. His stay in Calcutta varied from two to four months He used to pay commission on the goods sold to the arut where he put up, and he was in the habit of drawing hundis at Patna on himself at Calcutta, accepting and paying them in Calcutta. The plaintiff brought a suit on a hundi so drawn, and purporting to be so accepted by the defendant, of which payment was refused [illegible] mitted the d [illegible] acceptance [illegible] note had not [illegible] summons was served on the defendant in Calcutta Leave to institute the suit had not been obtained under cl. 12 of the Letters Patent *Held* the whole cause of action did not arise in Calcutta. *Held* also that the defendant was not, at the commencement of the suit, carrying on business in Calcutta within cl. 12 of the Letters Patent Leave to institute the suit under cl. 12 not having been obtained, the Court had no jurisdiction to entertain the suit. HARJIBAN DAS v. BHAGWAN DAS

[7 B. L. R., 102: 16 W. R., O. C., 16

Held, on appeal, reversing the decision of the Court below, that the defendant was "carrying on business" in Calcutta within cl. 12 of the Letters Patent. HARJIBAN DAS v. BHAGWAN DAS

[7 B. L. R., 535; 16 W. R., O. C., 16

88. ———— *Letters Patent,* [illegible]

MANJI [illegible] 1 Bom., 220

89. ———— *Letters Patent, cl. 12—Carrying on business by agent*—Cl. 12 of the Letters Patent of the Madras High Court does not, in order to give jurisdiction, require a defendant personally to carry on business within the local limits of Madras. MUTHAYA CHETTI v. ALLAN

[I. L. R., 4 Mad., 209

90. ———— *High Court of Bombay, Jurisdiction of—Letters Patent, High Court, 1865, cl. 12—Persons not British subjects resident outside the jurisdiction, but carrying on business by an agent within the jurisdiction—British subjects resident outside the jurisdiction, but carrying on business by an agent within the jurisdiction—Cause of action arising wholly outside the jurisdiction*—In cl. 12 of the Letters Patent, 1865, of the Bombay High Court, the words "if the defendant . . shall . . carry on business" must be interpreted to mean "if the defendant being a British subject . . . shall [illegible]

[illegible] the jurisdiction of the Municipal Courts of India. It must therefore be read by the light of the general principles of municipal jurisdiction, save so far as it expressly derogates from their general principles. Every statute is to be interpreted and applied so far as its language admits so as not to be inconsistent with the comity of nations or with the established rules of international law. All legislation is, *primâ facie*, territorial. It binds all subjects of the Crown, but only such subjects of other countries as have brought themselves within the allegiance of the Sovereign. A person not a British subject resident out of the jurisdiction, but carrying on a branch business in Bombay through [illegible]

91. ———— [illegible]

[illegible] profit, he accepts the protection of the territorial authority [illegible] from it, a [illegible] to the Co[illegible]
v. KASSIGA[illegible] I. L. R., 11 Bom., 662

92. ———— *Civil Procedure Code, 1882, s. 17—Suit on a foreign judgment—"Carrying on business" within the jurisdiction—Business carried on by the managing member of a Hindu family—"Principal and agent" with reference to s. 17 of Civil Procedure Code—Application of s. 17 of Civil Procedure Code to non-resident foreigner.*—Plaintiff, having obtained judgment against defendant in a suit on a bond in the

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*continued.*

Civil Court at Pondicherry, sued him on the said judgment in a District Court in British India. The date of the foreign judgment was 20th March 1896, and that of the suit in British India, 9th October 1896; but in the meanwhile, namely, on 20th July 1896, defendant had been declared an insolvent in

had, as a fact, become partially divided prior to the commencement of the business, and as there was no evidence of his consent, the presumption contended for could not arise. But even if the facts had been otherwise, and the defendant had been

who actually consents to a trade being carried on

Procedure should be construed so as to exclude from its operation non-resident foreigners, even though they carry on business in British India through agents, and, if such construction be inadmissible, whether the said section of the Indian Legislature should be held with reference to such foreigners to be *ultra vires,—Quære.* MURUGESA CHETTI *v.* ANNAMALAI CHETTI . . **I. L. R., 23 Mad., 458**

93. — — **Personally working for gain**—*Suit to recover value of timber.*—A suit to recover the value of timber alleged to have been

11 W. R., 64

94. ———— *Cause of action*

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*continued.*

the specific condition that such advance was to be

fees had not been returned—*Held,* in a suit for the

creditor at Benares and to have paid him there, or have remitted the money to him. *Semble*—That a

High Court, and who goes to the High Court whenever he is engaged to appear there, is one who "personally works for gain" inside of the limits of the station in which the High Court is located within the meaning of s. 5, Act VIII of 1859. RAI NARAIN DASS *v.* NEWTON . . . . **6 N. W., 43**

(b) CAUSE OF ACTION.

95. ———— **General cases as to arising of cause of action**—*Civil Procedure Code, 1859,*

gether. Act XXIII of 1861, s 3, requires the absence of both to justify the dismissal of the suit for want of jurisdiction. MORRIS *v.* ATMAKURU LUTCHMANA ROW . . . **6 Mad., 43**

ANONYMOUS CASE . . . **5 Mad., Ap., 4**

96. ———— *Letters Patent, cl. 12—Cause of action partly arising—Leave of Court.*—Under cl. 12 of the Charter of the High Court, 1865, when the cause of action arises only partly within the local limits, the leave of the Court must be obtained before the institution of the suit. ABDOOL HAMED *v.* PROMOTHONATH BOSE **[1 Ind. Jur., N. S., 218**

97. ———— *Suit for sum made up of items as to which cause of action arose*

cause of action. The whole cause of action includes every fact essential to the maintenance of the action, and each of those facts separately is but a part of the cause of action. The Charter of the High Court refers to a cause of action arising wholly or in part within the local limits. The cause of action spoken of may consist of several parts, which parts may arise in different places. *Per* HOLLOWAY, J.—The High Court is not bound by the definition of cause of action derivable from the English cases. Where there is a manifest discordance between a decision of the Judicial Committee of the Privy Council and the Common Law Courts at Westminster, the decision of the Judicial Committee is entitled to the greater weight. Irrespectively of the domicile of the defendant, there is a competent forum wherever a place can be indicated to which the right and its infraction can both be referred, because there is a cause of action and the whole cause of action. DE SOUZA *v.* COLES . . . 3 Mad., 384

98. ——— ——— *Evidence as to jurisdiction at hearing—Letters Patent, High Court, cl 12—Suit for rent of house out of jurisdiction and for price of goods sold by defendants in Calcutta as agents—Amendment of plaint to cause of action.*—The plaintiff as Receiver to the estate of *S* instituted a suit on the 11th July 1898 against the defendants to recover the sum of R2,808-13-2, a portion of the said sum being the rent of a house occupied by the defendants at Mandalay since January 1894 till the

that the Court had no jurisdiction, inasmuch as the plaint on its face did not show that the cause of action or any part of it arose in Calcutta, that the cause o title alone represented the defendants as

to give evidence at the hearing to show that his cause of action arose in Calcutta. To admit evidence

when the suit comes on for hearing. FINK *v.* BULDEO DASS . . . . I. L. R., 26 Calc., 715 [3. C. W. N., 524

99. ——— Account, Suit for—*Letters Patent, cl 12—Leave to sue—Part of the cause of action material.*—The plaintiff and the second defendant were the owners of a family business which was carried on by munims in Bombay, Cutch and Zanzibar. The first defendant was for many years the munim in management of the business at Zanzibar. This suit was brought, praying that an account might be taken of the management by the first defendant of the business at Zanzibar, and that in taking such account the first defendant might be charged with all sums misappropriated by him, or lost by his neglect or fraud. The second defendant was joined as a defendant merely because he refused to join as a plaintiff. The plaint instanced various acts of misappropriation and neglect and fraud on the part of the first defendant, some few of which were said to have been effected by means of transfer and other entries made in the books of the Bombay firm on instructions sent by the first defendant from Zanzibar. At the time of filing the suit the leave of the Court, under cl. 12 of the Letters Patent, was obtained. On a summons taken out to rescind such leave,—*Held* that the leave given must be rescinded, no such material part of the cause of action having arisen in Bombay as would justify this Court in transferring to itself a case which *primâ facie* ought to be tried elsewhere. *Ismail Hadjee Hubbeeb* v. *Mahomed Hadjee Joosub, 13 B. L. R. 91,* referred to KESSOWJI DAMODAR JAIRAM *v.* LUCKMIDAS LADHA . . . I. L. R., 13 Bom., 404

100. ——— *Cause of action arising on items of account—Civil Procedure Code, 1859, s. 5—Act XXIII of 1861, s. 4.*—In the Civil Court of Berhampore, plaintiffs sued defendants for money due by one *S*, deceased. Defendants 1, 2, 3, and 4 were sued as heirs of the deceased; the fifth defendant as having instigated the other defendants to withhold payment. The first defendant resided at

there were, between the plaintiffs (merchants at Berhampore) and deceased

none of the defendants

101. ——— *Civil Procedure Code, 1859, s. 5—Place of*

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*continued.*

conjunction with *A*'s son; *A* agreeing to advance the required funds on the condition that the sum advanced should be repaid him within a certain date with interest. No place was fixed for repayment. The money partly in C Chandernag balance of Court, the inasmuch a *Held* on app the Hooghly Court had jurisdiction to try the suit. *Per* MARKBY, *J*—An action may be brought either in the forum of the place where the contract was made or have taken p would apply if ntract was made n had any dwelling or place of business. *Per* BIRCH, *J*—When no place for the performance of a contract is prescribed by the agreement, or exacted by the necessities of the case, the place where it is intended by the parties such contract should be fulfilled ought to supply the forum. GOPIKRISHNA GOSSAMI *v.* NILKOMUL BANERJEE [13 B. L. R., 461 : 22 W. R., 79

102. ———— *Agreement to repay balance struck.*—Where a balance was struck, and an agreement to repay the balance was drawn out at Cawnpore,—*Held* the Cawnpore Court had jurisdiction to entertain a suit on that agreement, and its jurisdiction was not affected by the fact of the transaction, in respect of which the agreement was given, having happened elsewhere. HAIM RAJ *v.* RAM BUX 1 Agra, 115

103. ———— *Place of payment not specified*—*D & Co.*, carrying on business at C, shipped goods to London for sale on account of *P D*, and advanced money to *P D* against the shipments. *P D* promised to pay the difference if the amount realized by the sales in London fell short of *D & Co.*'s advance, costs, and commission No place of payment was specified *Held*, in a suit

been payable. DARRAGH & CO. *v.* PURSHOTAM DEVJI . . . . I. L. R., 4 Mad., 372

104. ———— *Residence by agents—Joinder of causes of action.*—The right to join in one suit to causes of action against a defendant cannot be exercised, unless the Court to which the plaint is presented has jurisdiction over both

105. ———— *Venue—Act X of 1859, s. 24—Suit by zamindar against manager of two estates.*—The defendant was appointed a superintendent of two estates, one called Chulman, within the subdivision of Diamond Harbour, and the other Alipore, within the subdivision of Alipore

recover the balance which appeared due the zamindar brought this suit. *Held* that, as the defendant had agreed by his kabuliat to make the principal kutcherry his place of business, and as both the plaintiff and defendant agreed that the cause of

was by his order disbursed, the cause of action arose in the district within which the principal kutcherry lay. PRASANNA CHANDRA BOSE *v.* PRASANNA CHANDRA RAI . . . 7 B. L. R., Ap, 35 [15 W. R., 343

106. ———— Agreement—*Part of cause of action arising in jurisdiction—Suit on agreement executed within jurisdiction—Place for payment of money under deed—Costs of preparing a deed—Stamp duty.*—In December 1892, the plaintiffs agreed to supply the defendants with machinery for their mill near Calcutta. The defendants, being unable to pay for it in accordance with that agreement, entered into a supplementary agreement with the plaintiffs on the 10th August 1894, whereby it was arranged that the plaintiffs should accept shares in the defendants' company and debentures charged on the property in satisfaction of their claim. The agreement provided that the defendant company should forthwith execute an indenture of trust, in favour of trustees to be named by the plaintiffs, for the purpose of securing the said debentures, such indenture to be prepared by the plaintiffs' solicitors together with the debentures at the expense of the company and to be approved by the company's solicitors. It was lastly provided that this agreement should be treated as forming part of, and supplemental to, the agreement of December 1892. This agreement was signed in Bombay by J. Marshall on behalf of the plaintiffs The indenture and debentures were duly prepared by the plaintiffs and approved by the defendants' solicitors in Bombay. The plaintiffs, having paid in Bombay the solicitor's bill of costs in respect of the preparation of the indenture and debentures, now sued to recover the amount from the defendants under the terms of the above agreement of 1894 Court had no did not reside that no part o *Held* that th ment of Augu plaintiffs' age of the cause Further, it appeared that it was intended that the

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*continued.*

payment to be made by the plaintiffs should be made in Bombay where both the plaintiffs' agent and solicitors resided. *Held* also that the plaintiffs were entitled to include in their claim the stamp duty paid on the trust-deed. The agreement contemplated that the defendants should pay all the costs incidental to the execution of the deed DOBSON AND BARLOW v. BENGAL SPINNING AND WEAVING CO.

[I. L. R., 21 Bom., 126

107. ———— Bond, Suit on—*Immediate cause of suit—Civil Procedure Code, 1859, s 5*—S. 5 of Act VIII of 1859 gave jurisdiction to the Court where the cause of action shall have arisen, or in other words, where the facts which immediately confer the right to sue have occurred Where the immediate cause of the suit was the non-payment of money due on a bond,—*Held* that the Court of the place where default had been made in payment had the jurisdiction to try the suit, and not the Court within the jurisdiction of which the bond was made. PREM SHOOK v. BHEEKOO

[3 Agra, 242: Agra, F. B., Ed. 1874, 149

108. ———— *Residence.*—A bond was executed at Arrah, and provided that payment should be made to plaintiff in person, and though it described plaintiff and defendant as inhabitants of Patna, yet the plaintiff having been admittedly a resident at Arrah, at the time the bond was executed and for some years previously,—*Held* that the intention of the parties was to make the money payable at Arrah, and that consequently the Judge of Shahabad had jurisdiction NIRBAN SINGH v. KUMLA SAHOY . . 17 W. R., 345

109. ———— Breach of contract—*Contract for sale and delivery of goods at fixed price—Suit for price—Place of suing—Act X of 1877 (Civil Procedure Code), s. 17 (a).*—C and L entered into an agreement at a place in the Sarun district, in which the latter resided and carried on business, whereby C promised to sell and deliver to

carried on business), payable thirty days after the receipt of the goods or by Government currency

was L's breach of his promise to pay for the goods; that the parties intended that payment should be made at Cawnpore, and the cause of action therefore arose there; and that therefore the suit had been properly instituted there. LLEWHELLIN v. CHUNNI LAL

[I. L. R., 4 All, 423

110. ———— *Civil Procedure Code, 1882, s 17—Place of making of contract.*—The expression "cause of action," as used in s 17 of the Civil Procedure Code, does not mean whole cause of action, but includes material part of the cause of action. In a suit for compensation for breach of a contract, the making of the contract is a material part of the cause of action. *Held* therefore, where a contract was made at C and broken at A, that the Court at C had jurisdiction to try the suit for compensation for the breach of such contract. *Llewhellin v. Chunni Lal, I. L. R., 4 All., 423,* and *Gopikrishna Gossami v. Nilkomul Banerjee, 13 B. L. R., 461,* followed *DeSouza v. Coles, 3 Mad., 384,* and *Jumoonah Pershad v. Zaibunnissa, 5 C. L. R., 268,* dissented from. BISHUNATH v. ILAHI BAKHSH . . I. L. R., 5 All., 277

111. ———— *Performance of*

provided he shipped the goods On the failure of defendant No. 2 to ship the goods, the plaintiff brought a suit against the defendants in the Court at Karwar to recover the amount. He claimed against K & Co. (defendant No. 1) because they had paid the money to the second defendant before the goods were shipped, and against the second defendant because [illegible]

had recei

of opinic

sued, was that the second defendant would ship the goods at Bombay to the plaintiff at Karwar. The

DAJIBHAI v. DIOGO SALDANHA

[I. L. R., 18 Bom., 43

112. [illegible]

113. ———— *Non-delivery of*

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*continued.*

paid for at the market rate at Purola. The goods

delivered. CHUNILAL MANIKLALBHAI *v.* MAHIPATRAV VALAD KHUNDU . 5 Bom., A. C., 33

114. ———————— *Goods delivered*

must be dismissed for want of jurisdiction. So long as goods, though delivered to a common carrier appointed by the consignee, remain at the risk of the consignor, they are not delivered to the consignee WINTER *v* WAY . . 1 Mad., 200

115. ———————— *Letters Patent, cl. 12—Non delivery of goods.*—Plaintiffs contracted at Cawnpore with the East Indian Railway Company to deliver goods in Madras The East Indian Railway does not run into the jurisdiction of the Madras High Court. The Railway Company made default in delivery of the goods, and the plaintiffs sued them in the Madras High Court for damages for the breach of contract. No leave to sue (under

KADAR *v.* E. I. RAILWAY COMPANY [I. L. R., 1 Mad., 375

116. ———————— *Part of cause*

within the jurisdiction and gave a decree for plaintiff leaving it advised.

117. ———————— *Civil Procedure Code, 1859, s. 5.*—By a contract entered into at Beerjore, in the district of Nuddea, the plaintiff agreed to supply indigo seed to the defendant, the seed to be paid for on delivery by an order to be sent to the plaintiff on receipt of the seed. The plaintiff resided at Berhampore, in the district of Moorsheda-

the Moorshedabad Court to

recover the price of the seed,—*Held* that the Moor-

Court. *Semble*—The words "cause of action" in that section do not mean the whole cause of action. HILLS *v.* CLARK 14 B. L. R., 367 : 23 W. R., 63

118. ———————— *Place of performance of contract—Suit for price of seed.*—Plaintiff at

15 B. L. R., 405

119. ———————— *Whole cause of action—Contract—Place of performance of con-*

eight of the instalments, brought this suit for the balance. The defendant, who did not dwell or carry on business in Bombay, pleaded (*inter alia*) that the High Court of Bombay had no jurisdiction, as the whole cause of action had not arisen in Bombay,

I. L. R., 11 Bom., 649

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*continued.*

120. ——————— *Sale of goods.—Payment of proceeds.*—Where the plaintiffs and defendants made consignments of a certain number of bales of cotton belonging to each for the Mirzapore market, and the cotton was unloaded and sold at Cawnpore by direction of the latter, and the proceeds were received by them at Meerut, where they all but one resided, and credited to their accounts,—*Held*, in a suit for damages, that the defendants, who ordered the sale at Cawnpore and profited by the proceeds, and not a defendant who resided at Cawnpore and acted under instructions from the other defendants, were primarily liable, and that the suit was cognizable in the Meerut Court. LUCKHEE RAM *v.* MAHANI RAM . . . 1 Agra, 10

121. ——————— *Advances made for delivery of wood.*—Where the suit was brought upon the defendant's breach to deliver wood in pursuance of the terms of the contract,—*Held* that the mere fact that an advance was made within the local jurisdiction of a Court would not give that Court jurisdiction in such suit. AJOODHYA PERSHAD *v.* GOBIND RAM . . . . 2 Agra, 188

122. ——————— *Contract for sale of land—Suit for purchase-money.*—Where there is a contract of sale of land, an action can ordinarily be brought by the vendor for the purchase-money, whether or not the Court in which the action is brought has jurisdiction over the seat of the obligation which it is sought to enforce. YOUNG *v.* MANGALAPILLY RAMAIYA . . . 3 Mad., 125

123. ——————— *Suit for specific performance or return of money—Land situated without local limits of jurisdiction.*—In consider-

124. ——————— *Contract, Ratification of—Contract relating to lands.*—*A*, on be-

mother, and which related to lands at X, the Court of X had jurisdiction in a suit for recovery of certain of the yearly payments. KISHEN KISTER GHOSE *v.* BORODAKANTH ROY

[Marsh., 533 : 2 Hay, 664

125. ——— Compromise—*Letters Patent, cl. 12—Compromise outside of decree obtained*

that the Court had no jurisdiction. FEDA HOSSEIN *v.* SYEDOONISSA . . 1 Ind. Jur., N. S., 60

126. ——— Dower—*Suit for dower debt—Civil Procedure Code (1882), s. 17—Mahomedan*

MUHAMMAD MUJTABA KHAN

[I. L. R., 18 All., 400

127. ——— Foreign judgment, Suit on—*Letters Patent, cl. 12—Company—Service of balance order on defendant—Winding up.*

It was contended on his behalf that no part of the cause of action had arisen within the jurisdiction, and that the suit was therefore not maintainable. The plaintiffs contended that service of the balance

service of the balance order upon the defendant was not necessary; and that, as no part of the cause of action had arisen within the jurisdiction, the suit should be dismissed. LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* BADEE BEEBEE

[I. L. R., 5 Bom., 49

128. ——— Fraud—*Suit for goods obtained by fraud—Letters Patent, cl. 12.*—*G* went to the plaintiff's place of business in Calcutta, and repre-

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*continued.*

paid for at the market rate at Purola. The goods were not delivered in pursuance of the agreement. *Held*, in an action brought to recover their value at the market rate at Purola, that the cause of action arose at Padshu, where the goods ought to have been delivered. CHUNILAL MANIKLALBHAI *v.* MAHIPATRAV VALAD KHUNDU . 5 Bom., A. C., 33

114. ——— *Goods delivered*

... at the suit ... So long as goods, though delivered to a common carrier appointed by the consignee, remain at the risk of the consignor, they are not delivered to the consignee WINTER *v* WAY . . 1 Mad., 200

115. ——— *Letters Patent, cl. 12—Non-delivery of goods.*—Plaintiffs contracted at Cawnpore with the East Indian Railway Company to deliver goods in Madras. The East Indian Railway does not run into the jurisdiction of the Madras High Court. The Railway Company made default in delivery of the goods, and the plaintiffs

[I. L. R., 1 Mad., 375

116. ——— *Part of cause of action in jurisdiction.*—Where defendant, in an action for goods sold and delivered, pleaded want of

... R. L., 181

117. ——— *Civil Procedure Code, 1859, s 5.*—By a contract entered into at Beerpore, in the district of Nuddea, the plaintiff agreed to supply indigo seed to the defendant, the seed to be paid for on delivery by an order to be sent to the plaintiff on receipt of the seed. The plaintiff

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*continued.*

recover the price of the seed,—*Held* that the Moorshedabad Court had jurisdiction to entertain the suit. The refusal of payment by the defendant, which was to have been made in the district of Moorshedabad, was a sufficient cause of action under s. 5, Act VIII of 1859, to enable the plaintiff to sue in that Court. *Semble*—The words "cause of action" in that section do not mean the whole cause of action. HILLS *v.* CLARK 14 B. L. R., 367: 23 W. R., 63

118. ——— *Place of performance of contract—Suit for price of seed.*—Plaintiff ... at ... reed ... of ... t at ... ris- ... eed.

HURRI MOHUN MULLICK *v.* GOBURDHUN DASS [3 C. L. R., 459

119. ——— *Whole cause of action—Contract—Place of performance of contract where no stipulation in contract—Leave to sue under cl. 12 of Letters Patent.*—By a contract executed in Bombay on the 19th December 1885, the defendant promised to pay the plaintiff R9,152, of which amount the sum of R4,752 was to be paid by monthly instalments of R132 extending over a period of three years, and the remainder, *viz.*, R4,400, in a lump sum at the end of the three years. It was provided that, in case of default being made in payment of any of the instalments, the whole of the amount then due should be paid forthwith. The plaintiff, alleging that the defendant had only paid eight of the instalments, brought this suit for the balance. The defendant, who did not dwell or carry on business in Bombay, pleaded (*inter alia*) that the High Court of Bombay had no jurisdiction, as the whole cause of action had not arisen in Bombay, and no leave to sue had been obtained by the plaintiff under cl. 12 of the Letters Patent. The written contract, which was admittedly executed in Bombay, contained no stipulation as to where the instalments or the final balance was to be paid. *Held* that, in the absence of stipulation in the contract itself, the

... took place at Surat and not in Bombay, and the

... I. L. R., 11 Bom., 640

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*continued.*

120. ——————— *Sale of goods.—Payment of proceeds.*—Where the plaintiffs and defendants made consignments of a certain number of bales of cotton belonging to each for the Mirzapore market, and the cotton was unloaded and sold at Cawnpore by direction of the latter, and the proceeds were received by them at Meerut, where they all but one resided, and credited to their accounts,—*Held*, in a suit for damages, that the defendants, who ordered the sale at Cawnpore and profited by the proceeds, and not a defendant who resided at Cawnpore and acted under instructions from the other defendants, were primarily liable, and that the suit was cognizable in the Meerut Court. LUCKHEE RAM *v.* MAHANI RAM . . . . 1 Agra, 10

121. ——————— *Advances made for delivery of wood.*—Where the suit was brought upon the defendant's breach to deliver wood in pursuance of the terms of the contract,—*Held* that the mere fact that an advance was made within the local jurisdiction of a Court would not give that Court jurisdiction in such suit. AJOODHYA PERSHAD *v.* GOBIND RAM . . . . 2 Agra, 188

122. ——————— *Contract for sale of land—Suit for purchase-money.*—Where there is a contract of sale of land, an action can ordinarily be brought by the vendor for the purchase-money, whether or not the Court in which the action is brought has jurisdiction over the seat of the obligation which it is sought to enforce. YOUNG *v.* MANGALAPILLY RAMAIYA . . . 3 Mad., 125

123. ——————— *Suit for specific performance or return of money—Land situated without local limits of jurisdiction.*—In consideration of the loan of R4,000, the defendant agreed to

124. ——————— *Contract, Rati-*

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*continued.*

tain of the yearly payments. KISHEN KINKUR GHOSE *v.* BORODAKANTH ROY [Marsh., 533 : 2 Hay, 656

an action brought by *B* to prevent *A* from proceeding upon the decree of the Supreme Court,—*Held* that the whole cause of action did not arise within the local limits provided by the Letters Patent, and that the Court had no jurisdiction. FEDA HOSSEIN *v.* SYEDOONISSA 1 Ind. Jur., N. S., 80

127. ———Foreign judgment, Suit on—*Letters Patent, cl. 12—Company—Service of balance order on defendant—Winding up.*—The defendant, who resided outside the jurisdiction of the

order upon the defendant was necessary, and constituted part of the cause of action, and that, as such service had been effected upon the defendant in Bombay, the Court has jurisdiction *Held* that service of the balance order upon the defendant was not necessary, and that, as no part of the cause of action had arisen within the jurisdiction, the suit should be dismissed. LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* BADEE BEEBEE [I. L. R., 5 Bom., 49

128. ———Fraud—*Suit for goods obtained by fraud—Letters Patent, cl. 12.*—*G* went to the

local limits of the jurisdiction of the Court, and pledged the jewellery to *K* for R6,000 In a suit brought against *G* and *K* to recover the jewellery or its value, *G* did not appear, and *K* alone defended

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*continued.*

the suit. *Held* that it being, with reference to s. 178 of the Contract Act, an essential element in the plaintiff's case that the jewellery had been obtained from the plaintiff by fraud in Calcutta, part of the cause of action against *K* arose in Calcutta, so as to enable the Court, leave having been obtained under cl. 12 of the Charter, to entertain the suit against him. KARTICK CHURN SETTY *v.* GOPALKISTO PAULIT . . . . I. L. R., 3 Calc., 264

129. ———— Legacy, Suit for—*Place of residence of legatee and of heir.*—A suit for a legacy must be brought, not within the jurisdiction where the legatee resides, but within the jurisdiction where the heir resides. ASHOOTOSH BOSE *v.* HUREE CHURN NAG . . . . 16 W. R., 305

130. ———— Lost property—*Property lost in one district and found in another.*—A suit to recover property lost in one district and found in another must be instituted in the Court of the district in which it is found. RAM PARTAB SINGH *v.* BHOLABUTTY KOONWAR 9 W. R., 586

131. ———— Maintenance, Suit for—*Letters Patent, 1865, cl. 12.*—The plaintiff's father left various properties partly within and partly outside Calcutta. The plaintiff instituted this suit, as an indigent sonless widowed daughter, against the defendants for the recovery of her maintenance out of the estate inherited by them from her father, and prayed that her maintenance might be declared a charge upon the property situated within the limits of Calcutta. Some of the defendants lived within and some outside Calcutta. Leave was obtained under cl. 12 of the Letters Patent. It was held that, under the abovementioned circumstances, the High Court had jurisdiction to try the action. MOKHODA DASSEE *v.* NANDO LALL HALDAR

[I. L. R., 27 Calc., 555
4 C. W. N., 669

132. ————Malicious prosecution, Suit for—*Letters Patent, 1865, cl. 12—Jurisdiction.*—Where the plaintiff, in an action for malicious prosecution, alleged that the defendant had instituted criminal proceedings against him before the Magistrate [illegible] the [illegible] that [illegible] of [illegible] f the cause of action arose in Calcutta, so as to entitle the plaintiff, with leave of the Court, to bring an action in the High Court. LUDDY *v.* JOHNSON

[6 B. L. R., 141

133. ————Misrepresentation—*Information as to carriage of goods by railway.*—Where the defendants at C were asked to obtain information from a railway company as to the cost of carriage of coal from R to C which they were about to sell to the plaintiff at C, and they did so communicating in good faith the result to the plaintiff, and the plaintiff was ultimately compelled to pay to the railway company a much larger sum than the defendant had represented,—*Held*, assuming there was a right of suit, the cause of action must be held to have arisen at C, where the alleged representation must be deemed to have been made. BENGAL COAL COMPANY *v.* ELGIN COTTON COMPANY

[2 N. W., 13

134. ———— *Letters Patent, cl. 12—Suit to set aside decree of High Court on ground of misrepresentation.*—It is not necessary to obtain the leave of the High Court under cl. 12 of the Letters Patent to sue to set aside a decree of that Court made upon a compromise to which the plaintiff has been induced by the misrepresentations of the defendant to agree, even when it appears from the plaint that the defendants are outside the jurisdiction of the Court. SOLOMON *v.* ABDOOL AZIZ

[4 C. L. R., 366

135. ———— Money had and received, Suit for—*Place of estate sold and place of receipt of money.*—*R*, having a right to an estate in P, then in the hands of *B*, sold it to *S*. Contemporaneously with the sale, *R* and *S* by deed bound themselves in common to take all needful steps to obtain possession of the estate from *B*. *R* by a suit in the Supreme Court against *B*, recovered the estate and mesne profits which were paid to him in Calcutta. In a suit instituted in P by the representative of *S* against *R* for the amount so realized by him, it was held that the plaintiff was entitled to recover, and that the cause of action arose in P. SHARODAPERSAD MOOKERJEE *v.* BENGAL INDIGO COMPANY

[1 Ind. Jur., N. S., 32

136. ———— *Money in Government Treasury—Suit for sum held in deposit by Government for collections made by it.*—Where a suit was brought for the surplus collections of the proprietary profits of an estate made by Government during a period when it was held as Koork tahsil, [illegible] was included within the Kumaon Division, and it further appeared that no portion of the collections in question were in deposit in the Bareilly Treasury,—*Held* that the Bareilly Court had no jurisdiction to entertain the suit. HEARSEY *v.* SECRETARY OF STATE FOR INDIA . . . 6 N. W., 47

137. ———— Negotiable instruments—*Suit on bill of exchange.*—Where a bill of exchange was drawn at Banda, and made payable and dishonoured at Benares, and the defendant also had his dwelling at Banda,—*Held* that the cause of action did not arise at Agra, merely on account of the bill of exchange having been sold at the latter place by a third party, purchaser from defendant. KISHEN CHUND *v.* KISHEN LALL . 2 Agra, 123

138. ———— *Hundi—Whole cause of action—Letters Patent, cl. 12.*—Where plaintiff brought an action to recover money paid by him in Calcutta, on hundis drawn by defendant beyond the local limits, but sent by him to Calcutta,

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*continued.*

MULL *v.* MUNNOOLOLL . 1 Ind. Jur., N. S., 219

139. ——— *Hundi—Letters Patent, cl. 12.—A*, who resided and carried on business in the Upper Provinces, sent cotton for sale to *B* in Calcutta, and drew hundis against it upon *B*, payable in Calcutta. The hundis were negotiated, and afterwards presented to *B*'s gomastah in Calcutta and there accepted and paid by him for *B* In a suit by *B* against *A* for balance of account, —*Held* that the whole cause of action arose in Calcutta within the meaning of cl. 12 of the Letters Patent DHUNRAJ *v* GOVINDARAM [1 B. L. R., O. C., 76

140. ——— *Hundi—Suit on hundi.*—A suit for recovery of the amount of a dishonoured hundi drawn at Shekoabad and payable at Furruckabad cannot be brought in the Court of the Munsif of Shahjehanpore, the abode of the endorsee of the dishonoured hundi, but where none of the drawers or endorsers resided. RAGHOODUR DYAL *v.* DWARKA DASS . . . 3 N. W., 343

141. ——— *Hundi—Whole cause of action—Suit on hundi made out of jurisdiction—Letters Patent, cl. 12* —The contract that the endorser of a hundi enters into is to pay the amount of the hundi to the holder (in case the drawee makes default) in the place where the hundi has been endorsed by him, and not in the place where it is made payable. Where, therefore, a hundi endorsed and delivered in Ajmere was payable in Bombay, where it was dishonoured, it was held that the cause of action of the holder against the endorser did not arise wholly in Bombay. *Quære*—Whether it arose in part in Bombay. SUGANCHAND SHIVDAS *v* MULCHAND JOHARIMUL . 2 Bom., 270

142. ——— *Hundi—Suit on hundis* —The defendant, who resided in the district of M, but carried on business through an agent at Calcutta, by a letter, dated 4th August 1874, signed by such agent, authorized the plaintiff to advance money to *H K*, at M, on hundis drawn there by him upon defendant's firm at Calcutta, the hundis to be accepted and paid at maturity at Calcutta. Hundis

money at M to be repaid at Calcutta, no cause of action, upon which a suit would lie against the defendant in the district of M, could arise upon it. JUMOONA PERSHAD *v* ZAIBUNNISSA [5 C. L. R., 268

143. ——— *Hundi—Suit on hundi—Letters Patent, cl. 12*—Where a hundi had been drawn out of the jurisdiction, upon a person within the jurisdiction, endorsed and delivered, out of the jurisdiction to one who, out of the jurisdiction, en ... ithin ... pre- ... was ... the dishonour of the hundi by the drawee within the

having obtained leave to bring his suit under cl 12 of the Letters Patent, 1865, the Court had jurisdiction. MULCHAND JOHARIMAL *v* SUGANCHAND SHIVDAS . . . I. L. R., 1 Bom., 23

Affirming the decree of the Court below in SUGANCHAND SHIVDAS *v.* MULCHAND JOHARIMAL [12 Bom., 113

144. ——— *Agreement at Delhi to pay money in Bombay—Hundi—Acceptance, What amounts to—Communication of acceptance to holder—Communication of acceptance to drawer—Omission by drawee to notify non-acceptance—Absence of entry of acceptance in drawee's book.*—The plaintiffs, who traded in Bombay, had

pay the amount of such composition to the plaintiffs

were contained in a composition-deed which was executed at Delhi, etc. At the hearing, the Court found that subsequently to the execution of the composition-deed the plaintiffs' munim, who was anxious to return to Bombay, had a conversation with the defendant at Delhi with reference to the plaintiffs' claim upon the insolvent firm, at which the defendant proposed that he should give a letter to the plaintiffs' said munim with reference to the claim, and that the munim should give one to him; that

account according to the practice of the merchants, the

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*continued.*

auspicious place, Delhi. From the seaport (town) of Bombay, written by Ganeshdas Thakurdas, whose salutations of victory * * *, etc. Do you be pleased to read * * *. I have an account with Shah Fatechand Kanyalal Jugalkissan, wherein R are claimable by me. On account of those rupees I will receive payment from you at the rate of eight annas in the rupee. A chitti in respect thereof I have obtained in writing from you 21st December 1884." These letters were exchanged at Delhi, and the plaintiffs' munim then returned to Bombay. *Held* that the Court had jurisdiction. If the oral agreement between the defendant and the plaintiffs' munim were taken as the basis of the plaintiffs' claim, it was clear that part of the cause of action arose in Bombay, as payment to the plaintiffs was to be made in Bombay. The exchange of letters was a carrying out in part of the oral agreement. When that agreement was made, the defendant was under a legal obligation to pay the plaintiffs' claim upon the insolvent firm The oral agreement varied the time, place, and mode of pay-

the oral agreement remained in force and unvaried.

Act (I of 1872), of a separate oral agreement completely consistent with their terms, namely, that the payment they provided for should be made in Bombay. *Held* also that, having regard to the circumstances

such debt as showing the nature and extent of the defendant's promise, but the existence of the debt would not constitute a part of the plaintiffs' cause of action. PRAGDAS THAKURDAS *v.* DOWLATRAM NANURAM . . . I. L. R., 11 Bom., 257

145. ———————— *Leave to sue under cl. 12 of the Letters Patent, 1865—Amendment of plaint in cases in which leave to sue under cl. 12 is necessary—Part of cause of action arising outside the jurisdiction—Hundi, Suit on—Suit by drawee within the jurisdiction against the drawer outside the jurisdiction.*—In suits for which leave to

ent cause of action, leave under cl. 12 cannot be granted after the institution of the suit; and therefore the Court cannot try such different cause of action, except in another suit duly instituted. In

necessary for such suits RAMPURTAB SAMRUTHROY *v.* PREMSUKH CHANDAMAL I. L. R., 15 Bom., 93

In a later case the plaint was amended by the addition of another defendant after the leave to sue had been granted, and an appeal by the original defendant from that order was dismissed. FOOLIBAI *v.* RAMPRATAB SAMRATRAI

I. L. R., 17 Bom., 466

146. ———————— *Suit on hundi —Endorsement by payee.*—A hundi, drawn at Benares on the drawer's firm at Bombay in favour of a firm at Mirzapur and Calcutta, was endorsed at Calcutta by the payee to a firm at Calcutta, and dishonoured by the drawer's firm at Bombay. In a suit brought in Calcutta by the endorsee to recover the value of the hundi, the defence was raised that the Court had no jurisdiction to entertain the suit *Held* that, the endorsement having taken place in

approved. ROGHOONATH MISSER *v.* GOBINDNARAIN I. L. R., 22 Calc, 451

147. ———————— *Letters Patent,*

for R500 on his firm at Bombay in favour of *D*, payable forty-five days after date. It was subsequently endorsed at Gwalior by *D* to the plaintiff

for acceptance, which was refused. The Bank thereupon returned it to the plaintiff at Cawnpore, and

it was never presented for payment. On the 16th June 1891, the plaintiff filed a suit upon the hundi against the defendant at Cawnpore, but on the 18th March 1893 the plaint was returned to him, the Court holding that it had no jurisdiction. On the 16th April 1893, the plaintiff filed this suit in the High Court of Bombay. Previously to the filing of the suit, the defendant had ceased to carry on business at Bombay. The defendant contended that the Court had no jurisdiction, inasmuch as (a) the defendant was a foreigner, and at the date of suit did not carry on business in Bombay; and (b) no part of the cause of action (if any) had arisen in Bombay. *Held* (1) that, under the Negotiable Instruments Act (XXVI of 1881), the dishonour of a hundi, by non-acceptance, constitutes now, as it has always done, part of the cause of action in a suit against the drawer, (2) that the Court had jurisdiction under cl. 12 of the Letters Patent, 1865. RAM RAVJI JAMBHEKAR v. PRALHADDAS SUBKARN . . I. L. R., 20 Bom., 133

148. ———— *Promissory note made and delivered within jurisdiction—Letters Patent, cl. 12.*—Where a promissory note payable within the jurisdiction is also in the first instance delivered within it, the cause of action arises within the jurisdiction. ISSER CHUNDER SEIN v. CRUZ [1 Ind. Jur., N. S., 233

149. ———— *Promissory note made out of jurisdiction—Defendant out of jurisdiction.*—The proclamation of the Governor General in Council, dated 26th August 1865, did not revive the jurisdiction of the late Supreme Court or affect the local limits under the Letters Patent, therefore

[illegible]

INDIAN CARRYING COMPANY v. [illegible] [1 Ind. Jur., N. S., 61

150. ———— *Promissory note.*—In an action on a promissory note, when the note was made payable to *A*, who resided in Calcutta, and was executed and delivered to him in Calcutta,—*Held* the whole cause of action arose in Calcutta. RAMGOPAL LAW v. BLAQUIERE . I B. L. R., O. C., 35

[illegible]

the suit not having been first obtained. MOTHOORMOHUN ROY v. JADOOMONEY DOSSEE [10 B. L. R., 122

152. ———— *Promissory note, Suit on—Delivery of note.*—Where the payee

[illegible]

very according to the promise is required to make it complete WINTER v. ROUND . 1 Mad., 202

153. ———— *Promissory note, Suit on—Maxim "Debitum et contractus sunt nullius loci."*—The High Court has no jurisdiction

[illegible]

promised to pay at Madras. Remarks on the maxim "*Debitum et contractus sunt nullius loci.*" RAJENDRA RAU v. SAMA RAU . 1 Mad., 436

154. ———— *Promissory note—Place of performance—Code of Civil Procedure (Act X of 1877), s. 17, Illus.*—Where a promissory note is executed in one district, and it is

[illegible]

Muhammad Abdul Kadar v. *E. I. Railway Co.*, *I. L. R.*, *1 Mad.*, *375*, and *Vaughan* v. *Weldon*, *L. R.*, *10 C. P.*, *47*, followed. LALJEE LALL v. HARDEY NARAIN [I. L. R., 9 Calc., 105 : 11 C. L. R., 125

155. ———— Partnership—*Place of conduct of partnership transactions—Suit for balance due.*—A contract was entered into at Rutlam for the establishment of a partnership to be carried on principally at Muttra, where all the transactions were to be conducted by means of the capital embarked in the concern at that place. *Held* that the cause of action in a suit for the balance resulting from these partnership transactions arose at Muttra. LUCHMEE CHAND RADHAKISHEN v. ZORAWAR MULL [1 W. R., P. C., 35 : 8 Moore's I. A., 291

156. ———— *Letters Patent, cl. 12—Suit against non-resident foreigners.*—Where an agreement in writing was signed by the plaintiff and the defendants at [illegible]

[illegible]

dealings, within tl[illegible] Court, an[illegible] suit having been obtained under cl. 12 of the Letters Patent of 1865, that the Court had jurisdiction to entering the suit. *Held* also that the

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*continued.*

jurisdiction of the Court was not affected by the circumstance that the defendants were non-resident foreigners. BAYAH MEAH SAIB *v.* KHAJEE MEAH SAIB . . . . . 4 Mad., 218

157. ——————— *Letters Patent, High Court, cl. 12—Part of cause of action arising on jurisdiction—Death of partner—Subsequent recovery of assets by surviving partner—Suit by administrator of deceased partner against surviving partner for recovered assets—Suit for partnership account.*—In 1889 one *H*, a widow and a partner in a firm carrying on business in partnership with two persons, *viz.*, *G* and *B* (defendants Nos. 1 and 2), in Sind and at Behrin in the Persian Gulf, died, and the partnership was then dissolved. *H* had no children, but it was alleged that she had adopted one *P*, the brother of the second defendant On the 13th February 1890, the guardian of one *K*, a minor (*H*'s husband's nephew), applied to the High Court of Bombay for letters of administration to her estate, alleging that *K* was her heir and next of kin. A caveat was filed by her father and others, in which they denied that *K* was her heir, and alleged that *P* had performed her funeral ceremonies. The matter came on as a suit on the 19th February 1894, when an order was made, without prejudice to any of the questions raised by the issues, dismissing the application and ordering letters of administration to *H*'s estate to issue to the Administrator General of Bombay. Letters of administration were accordingly granted to him on the 30th March 1894. In the meantime, however, *viz.*, on the 12th April 1893, *B* (defendant No 2) had filed three suits in the High Court of Bombay, in the name of himself and *G* (defendant No. 1), as *surviving partners of H's* firm, to recover certain debts due to that firm. Disputes subsequently arose between *B* and *G*, and by a consent order of the 22nd July 1893 it was ordered that any moneys recovered in the said three suits should be paid over to a receiver (defendant No 3), to be held by him until further order. On the *1st August 1893*, consent decrees were passed in the above three suits for a total sum of R48,235, which was forthwith handed over to the *receiver.* On the 22nd April 1894, the suit was filed by the Administrator General of Bombay as administrator of *H* appointed as above stated He claimed to recover the whole sum paid to the receiver, alleging that the first and second defendants as her partners were largely indebted to the firm, and that the money really belonged to her estate. He prayed that the receiver might be directed to pay over the money to him, and that, if necessary, the partnership accounts should be taken. The second defendant (*inter alia*) pleaded that the suit was one for partnership accounts, and was barred by limitation, and also that the High Court of Bombay had no jurisdiction to try it. *Held* that the Court had jurisdiction to hear the suit. The cause of action alleged was that the second defendant was endeavouring, under cloak of his position as surviving partner, to get into his hands a sum of money within the jurisdiction of the Court, with a view to deprive the representatives of his deceased partner of it, and to employ it for his own purposes. That was, at all events, part of the cause of action, and leave to sue had been obtained under cl. 12 of the Letters Patent, 1865. RIVETT-CARNAC *v.* GOCULDAS SOBHANMULL . I. L. R., 20 Bom., 15

Affirmed by the Privy Council in, BHAGWANDAS MITHARAM *v.* RIVETT-CARNAC

[I. L. R., 23 Bom., 544
3 C. W. N., 186

158. ——— Principal and agent—*Principal residing out of jurisdiction.*—*Held* that the Court at Furruckabad had no jurisdiction to entertain a suit against principals residing elsewhere, brought by the agents at Furruckabad. KHOOSHAL CHUND *v.* PALMER . . . 1 Agra, 280

159. ——— Registration—*Suit to compel registration—Registration Act, 1864, s 21—Civil Procedure Code, 1859, s. 5.*—Defendant executed in favour of plaintiff at Combaconum, in the zillah of Tanjore, a deed of mortgage of lands situated at a place within the jurisdiction of the District Munsif of Perambalur, in the Trichinopoly zillah. The deed, to make it enforceable, required registration, the place of registry (from the situation of the lands) being Perambalur. Plaintiff appeared at the registry office, but defendant did not. In consequence, the Sub-Registrar refused to register the deed. The present suit was brought to compel defendant to join in registering it. The District Munsif of Perambalur dismissed the suit upon the ground that the cause of action did not arise within his jurisdiction, but at Combaconum. The Civil Judge confirmed this decision, as he found that the [illegible]

[illegible] (Act I of 1864), which governed this case, rendered it necessary that the deed should be registered in Perambalur, the defendant was under an obligation to plaintiff to get the document registered at that place, that the breach of the obligation was the cause of action, and that consequently the Court at Perambalur had jurisdiction, as it was the place of the fulfilment of the obligation. SAMI AYYANGAR *v.* GOPAL AYYANGAR . . . 7 Mad., 176

160. ——— Release—*Suit to set aside release—Letters Patent, 1865, cl. 12.*—The plaintiff, resident in Calcutta, sued *H*, resident in Bombay, but carrying on business by his gomastah in Calcutta, and others resident in Bombay, to set aside a release executed in Calcutta of his interest in certain pro-

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*concluded.*

the whole cause of action did not arise in Calcutta so as to enable the plaintiff to sue in Calcutta without leave of the Court under cl. 12 of the Letters Patent. The word "defendant" in that clause means all the defendants, if there are several defendants to a suit. It is not sufficient that one of the defendants should dwell or carry on business within the jurisdiction. ISMAIL HADJEE HUBBEEB *v.* MAHOMED HADJEE JOOSUB. ROHIMA BYE *v.* MAHOMED HADJEE JOOSUB . 13 B. L. R., 91 : 21 W. R., 303

161. ———— Representative of deceased person—*Suit against representative.*—The representative of a deceased person may be sued in that Court within the jurisdiction of which the cause of action with the deceased person arose. LADD *v.* PARBUTTY DOSSEE . . 2 Hyde, 18

162.———— Restitution of conjugal rights—*Husband and wife* —The plaintiff sued his wife for restitution of conjugal rights in the Court of the Subordinate Judge of Borsad, within whose local jurisdiction the plaintiff resided. The defendant contended (*inter alia*) that the Subordinate Judge of Borsad had no jurisdiction to entertain the suit on the ground that she was living outside his jurisdiction. The Subordinate Judge dismissed the suit for want of jurisdiction. On appeal by the plaintiff, the decree was confirmed. On second appeal,—*Held,* reversing the decree, that the Court of Borsad had jurisdiction. The cause of action, in a suit by a [illegible]

3. SUITS FOR LAND.

(*a*) GENERAL CASES.

163.———— General cases of suits for land—*Land partly in, and partly out of, jurisdiction Letters Patent, cl. 12.*—Some of the property being situated in, and some out of, the jurisdiction of the Court,—*Held* that the Court had jurisdiction to try the suit according to the true construction of cl. 12 of the Charter, 1865, in reference to the whole of the property PRASANNAMAYI DASI *v.* KADAMBINI DASI . . 3 B. L. R., O. C., 85

164. ———————— *Letters Patent, High Court, cl. 12—Leave to sue—Immoveable property situated outside jurisdiction—Moveable property situated within the jurisdiction—Power to give l*[illegible] suit for land situ[illegible] Court, a [illegible] ,—*Held* that [illegible] to the lands, [illegible] as to them. [illegible] been wrongly granted by the Registrar. SESHAGIRI RAU *v.* RAMA RAU . . . . I. L. R., 19 Mad., 448

JURISDICTION—*continued.*

3. SUITS FOR LAND—*continued*

165. ———————— *Land partly in, and partly out of, jurisdiction—Letters Patent, cl. 12.*—Under cl. 12 of the Letters Patent, the High Court has jurisdiction to entertain suits for land, whether the land is situated wholly or in part only [illegible]

166.———————— *Suit for land* [illegible]

167. ———————— *Land in possession of receiver.*—The High Court cannot exercise jurisdiction in respect to land which is situate out of its local limits, even though it be in possession of the receiver. DENONAUTH SREEMANY *v.* HOGG [1 Hyde, 141

168. ———— Administration suit—*Acts of maladministration regarding immoveable property outside jurisdiction—Power of Court to set aside leases of immoveable property outside its jurisdiction—Letters Patent, High Court, cl. 12—* [illegible]

either to compel the owner to give effect to legal obligations into which he has entered or to a trust reposed in him NISTARINI DASSI *v.* NUNDO LALL BOSE . . I. L. R., 26 Calc., 891 [3 C. W. N., 670

169. ———— Award—*Application to file award — Cause of action—Civil Procedure Code, 1859, s 327* —The plaintiff and defendant entered [illegible]

[illegible] Calcutta, but both parties resided out of the jurisdiction The deed contained provisions for a reference to arbitration in case of difference or dispute in any matters relating to the partnership. Differences having arisen, arbitrators were appointed in accordance with the clause in the deed. The arbitrators subsequently made their award in Calcutta to the

JURISDICTION—*continued.*

3. SUITS FOR LAND—*continued.*

following effect That the defendant's share in the partnership property should stand charged with the payment of a certain sum found to be due by him to the plaintiff, and that the defendant should execute a mortgage of his share to the plaintiff as security for such payment; that the partnership should be dissolved on certain terms, and that the tea garden at Darjeeling should be sold in Calcutta. In an application under s 327 Act VIII of 1859, to file the award,—*Held*, affirming the decision of the Court [illegible]

A suit in respect of the subject-matter of this award would not be a suit for land, but a suit in which, by reason of the execution of the deed of partnership in Calcutta, a part of the cause of action arose there; such a suit could, with leave, have been instituted in the High Court, that Court, therefore, had jurisdiction to file the award. KELLIE *v.* FRAZER

[I. L. R., 2 Calc., 445

170. ———— Claim to attached property—*Claim under Civil Procedure Code, 1859, s 246.*—A claim to property under s 246, Act VIII of 1859, is virtually a suit for land. SAGORE DUTT *v.* RAMCHUNDER MITTER . 1 Hyde, 136

171. ———— Foreclosure—*Lex loci rei sitæ.*—When land forms the subject-matter of the suit, the *lex loci rei sitæ* applies. A suit for foreclosure is a suit for land. BLAQUIERE *v.* RAMDHONE DOSS . . Bourke, O. C., 319

172. ———— *Foreclosure of property out of jurisdiction—Practice.*—A suit for foreclosure of land out of the jurisdiction is a "suit for land," and cannot be brought in the High Court at Calcutta on the ground that defendant is living in Calcutta. In such cases the Court will return the plaint. BIBEE JAUN *v.* MAHOMMED HADEE

[1 Ind. Jur., N. S., 40

173. ———— *Cause of action—Property out of jurisdiction.*—A suit by a mortgagee for foreclosure must be brought in the district where the land is. In like manner, a suit by a mortgagee who is entitled, not to a foreclosure, but to a decree to establish his charge and for the sale of the specific property charged, must be brought in the Court within the legal limits of whose jurisdiction the property is. The remedy against the borrower personally under a mortgage-deed must be pursued in the district in which [illegible]

[illegible] . 2 N. W., 19

174. ———— *Portion of property in mofussil.*—Where a plaint prayed for foreclosure of a mortgage in the English form of certain land situated partly in Calcutta and partly in the mofussil, and for an account,—*Held* that leave to sue having been obtained under cl. 12 of the Letters Patent, the Court had power to make a decree with respect to the whole of the property. BANK OF HINDUSTAN, CHINA, AND JAPAN *v.* NUNDOLALL SEN . . . . . 11 B. L. R., 301

175. ———— *Letters Patent 1865, cl. 12—Foreclosure, Suit for.*—A suit for foreclosure [illegible]

Bom., 353, followed. SORABJI CURSETJI SETT *v.* RATTONJI DOSSABHOY I. L. R., 22 Bom., 701

176. ———— Injunction—*Civil Procedure Code, s. 5—Suit in personam—Suit for injunction to restrain nuisance.*—The plaintiffs, the owners and occupiers of a house and premises in Howrah, sued for an injunction to restrain a nuisance caused by certain workshops, forges, and furnaces erected by the defendants and for damages for the injury done thereby. The defendants were a railway company incorporated under an Act of Parliament for the [illegible]

sanction of the Bengal Government, on land pur[illegible]

within the meaning of cl. 12 of the Letters Patent, 1865, or of s. 5 of Act VIII of 1859. RAJMOHUN BOSE *v.* EAST INDIAN RAILWAY COMPANY

[10 B. L. R., 241

177. ———— *Letters Patent, cl. 12—Suit to restrain working of mine.*—In a suit brought against the owners of a mine adjacent to a mine belonging to the plaintiffs, the plaint alleged that a certain boundary line existed between the two mines, and prayed for a declaration that the [illegible] in their written statement disputed the plaintiffs' allegation as to the course of the boundary line. The mines were situated out of the jurisdiction of the High Court, but both the plaintiffs and defendants were personally subject to the jurisdiction. *Held* that the suit was a suit for land within cl 12 of the Letters Patent, and therefore one which, the land being in the mofussil, the Court had no jurisdiction to try. On the facts stated in the plaint and before the filing of the defendants' written statement, the Court granted an

JURISDICTION—*continued.*

3. SUITS FOR LAND—*continued.*

interim injunction, and refused an application to take the plaint off the file. EAST INDIAN RAILWAY COMPANY v. BENGAL COAL COMPANY [I. L. R., 1 Calc., 95

178. ——— Lien—*Letters Patent, cl. 12—Leave to institute suit in High Court—Suit to have maintenance declared a charge on property in the mofussil.*—The widow of one A D applied under cl. 12 of the Charter for leave to bring a suit in the High Court against the administrator of her husband's estate to have it declared that the maintenance allowed her was insufficient and to have it enhanced, and declared as a charge on the said estate. She prayed also for an account and the appointment of a receiver. It appeared that all the moveable property and the greater part of the immoveable was in Benares, a portion only of the latter being within the ordinary original civil jurisdiction of the High Court. The application was granted on 31st May 1873, leave being reserved to the defendant to move to have this order set aside. The plaint was then filed. When

should be tried in Calcutta, and as there was ample property within the jurisdiction of the Court at Benares to satisfy the maintenance, there was no necessity for its being declared to be a charge on the Calcutta property. RADHA BIBEE v. MUCKSOODUN DASS . . . . . . 21 W. R., 204

179. ——— ——— *Suit to have lands declared liable in satisfaction of bond.*—A suit to have certain lands declared liable for the

RAM LALL MOOKERJEE v. CHITTRO COOMAREE [15 W. R., 277

180. ——— *Suit to enforce*

ated. AHMEDEE BEGUM v. DABEE PERSAUD [18 W. R., 287

MAHOMED KHULEEL v. SONA KOOER [23 W. R., 123

181. ——— *Suit to enforce*

JURISDICTION—*continued.*

3. SUITS FOR LAND—*continued.*

land is situate. IN THE MATTER OF THE PETITION OF LESLIE . . . 9 B. L. R., 171

S. C. LESLIE v. LAND MORTGAGE BANK OF INDIA . . . . 18 W. R., 269

182. ——— *Mortgage lien*

property, is one falling within cl. (c) or (d) of s. 16 of the Code of Civil Procedure (Act XIV of 1882), and can only be instituted in that Court within the local limits of whose jurisdiction the mortgaged property is situate. A Court has no jurisdiction to entertain such a suit relating to property situate outside the local limits of its jurisdiction. VITHALRAO v. VAGHOJI . I. L. R., 17 Bom., 570

183. ——— *Letters Patent, High Court, cl. 12—Suit for land out of jurisdiction—Suit to declare interest on land—Suit to have land discharged from mortgage.*—Where the plaintiff alleged that he executed a mortgage of certain

... or for damages,—*Held* that, so far as the

try it. KANTI CHUNDER PAL CHAUDHRY v. KISSORY MOHUN ROY I. L. R., 19 Calc., 361 note

184. ——— *Suit to recover mortgage-debt by sale of mortgaged property out of the jurisdiction.*—A suit for the recovery of a mortgage-debt by the sale of the mortgaged property is not a suit for land within the meaning of s. 5 of the Code of Civil Procedure. A Court may decree the sale of mortgaged immoveable property, though situated beyond its jurisdiction. YENKOBA BALSHET KASAR v. RAMBHAJI VALAD ARJUN . 9 Bom., 12

185. ——— Partition—*Letters Patent, cl. 12.*—A suit for partition of land is a suit for land within the meaning of cl. 12 of the Letters Patent. PADAMANI DASI v. JAGADAMBA DASI [6 B. L. R., 134

186. ——— *Suit for partition where moveables are within, and immoveables outside, the jurisdiction—Practice—Leave to sue under cl. 12 of Letters Patent—Leave to sue.*

the immoveable property was outside the jurisdiction of the Court. *Held* that the case did not fall within the provisions of cl. 12 of the Letters Patent, 1865, and that the Court had no jurisdiction to hear the suit. The fact that his ... cluded a

JURISDICTION—*continued.*

3. SUITS FOR LAND—*continued.*

202. ——— **Possession, Suit for**—*Suit for property in different districts.*—In a suit to establish a claim against three properties mortgaged to the plaintiff, but situate in different districts, where one of the defendants (the appellant to the High Court) was interested in that only which lay in the district of Moorshedabad,—*Held* that causes of action against different defendants had been joined in the same suit contrary to the provisions of s 12 Act [illegible]
the
of
out the permission of the High Court, the appellant could not object to that Judge having tried it KHETOOSEE CHEROORIA v. BANEE MADHUB DOSS

[12 W. R., 114

203. ——— ——— *Civil Procedure Code (1882), ss. 16, 19, and 45—Joinder of causes of action—Suit for recovery of possession of immoveable property within the territorial jurisdiction of different Courts*—Where certain plaintiffs claimed possession of separate portions of land situ

to. HARCHANDAR SINGH v. LAL BAHADUR SINGH

[I. L. R., 16 All., 359

204. ——— **Rent**—*Suit for rent of a fishery—Uncertainty as to jurisdiction—Code of Civil Procedure (1882), s 16A—Immoveable property.*—A suit for rent of a fishery is a suit for immoveable property within the meaning of s 16A of the Code of Civil Procedure. *Fadu Jhala v. Gour Mohun Jhala, I. L. R., 19 Calc., 544*, referred to A suit for rent of a fishery was brought in a certain Court, and there was reasonable ground of uncertainty as to the jurisdiction of that Court to entertain the suit On an objection that the suit ought to fail for want of jurisdiction,—*Held* that the conditions required by s 16A of the Civil Procedure Code had been satisfied in the case, and that the
tain

205. ——— **Sale under mortgage**—*Tarai Regulation (IV of 1876)—Civil Procedure Code (1882), ss. 1, 2, 19, and 24—Mortgage of property situated partly in the district of Moradabad and partly in the Tarai—Suit for sale in Moradabad Court—Transfer of Property Act (IV of 188*
[illegible]

applied, by reason merely of a portion of the property mortgaged being situate in the Moradabad district. RAM RATAN v. LALTA PRASAD

[I. L. R., 17 All., 483

206. ——— **Decree, Effect of**—*Property in two different districts—Leave of Court.*—Where property was situated in Bhagulpore and other property in Tirhoot, and no leave had been obtained to include the property in Bhagulpore,—*Held* a decree in the Tirhoot Court could have no effect as against the property in Bhagulpore. BUNOSEE SINGH v. SOODIST LAL

[I. L. R., 7 Calc., 739: 10 C. L. R., 263

207. ——— **Power of Appellate Court to give leave**—*Civil Procedure Code, 1859, s. 12—Remand, Order in nature of—Property in different districts—Decrees of District Courts—Power of Appellate Court to amend.*—Neither under s 12 of Act VIII of 1859 nor in any other way has the High Court in its appellate capacity power to give

... comprised four villages, of which three were in district A and a fourth property was in district B. The second mortgage comprised, in addition to the above, three other villages in district B. Suits brought in both districts by the assignee of the mortgagee against the mortgagor were thus framed, *viz.*, in the suit in district A for possession upon foreclosure of both mortgages, and for a declaration of the plaintiff's right as purchaser of one of the properties; and in the suit in district B, for payment of the debt on the second mortgage. Both suits were dismissed. The High Court, hearing appeals in both suits together, affirmed the dismissal of the suit in district B, and remanded the other to the Court of first instance in district A, to have the

Courts, raised no question of jurisdiction, each of them might be taken to have had the consent of parties to its hearing the whole suit before it. But no such consent could be deemed to have been given to the order of the High Court made as above stated on contested appeals. This order was accordingly unauthorized. Although wide powers of amendment, of framing new issues, and of modifying decrees are conferred upon the High Court by provisions in the Code of [illegible] to be nar-
wers were
he order in
ig totally
decreed;
and this without the consent of the parties. KAMINI SUNDARI CHAODHRANI v. KALI PROSSUNNO GHOSE

[I. L. R., 12 Calc., 225: L. R., 12 I. A., 215

208. ——— **Power of High Court to sanction trial in Sonthal Pergunnahs**—

JURISDICTION—*continued.*

3. SUITS FOR LAND—*concluded.*

Civil Procedure Code, 1859, ss. 12 and 386—Suit for land above R1,000—Beng. Reg. III of 1872, s. 2—Bengal Civil Courts Act (VI of 1871).—Act VIII 1859 was in force in 1876 in the Sonthal Pergunnahs under s. 2 Bengal Regulation III of 1872, as regards suits triable in Courts constituted under Act VI of 1871. S. 4 of that Regulation (read with the notification of the Lieutenant-Governor, dated 4th August 1873) vesting the Deputy Commissioner of the district of the Sonthal Pergunnahs with the powers of a District Judge as described in Act VI of 1871 had the effect of making the Sonthal Pergunnahs a district as defined by s. 386 of Act VIII of 1859, and therefore, under s. 12 of Act VIII of 1859, the High Court had power to sanction the trial of a suit for land situated in the Sonthal Pergunnahs, in which the value of the subject-matter exceeds R1,000, in the Civil Court competent to try it. KALIPROSAD RAI *v.* MEHER CHANDRO ROY

[I. L. R., 4 Calc., 222: 3 C. L. R., 478

209. ——— Execution of decree made by Court without jurisdiction—*Place of suing—Suit for sale of mortgaged property—Civil Procedure Code, ss. 16, 20.*—In 1879 *R* gave *J* a bond containing a simple mortgage of immoveable property. Subsequently *R* and *P* jointly gave *D* a bond containing a simple mortgage of the same property. In 1881 *D* obtained a decree for the sale of the property under his mortgage, and it was put [illegible]

[I. L. R., 8 All., 117

4. ADMIRALTY AND VICE-ADMIRALTY JURISDICTION.

See MERCHANT SHIPPING ACT, 1875, s. 3

[I. L. R., 5 Calc., 453

210. ——— Supreme Court, Bombay, [illegible]

JURISDICTION—*continued.*

4. ADMIRALTY AND VICE-ADMIRALTY JURISDICTION—*continued.*

incidents, emergents, and dependencies annexed and connexed causes whatsoever, and to proceed sum- [illegible]

Bombay in maritime causes. LOUGHNAN *v.* JOOSUB BHUILADINA . 5 Moore's I. A., 137

211. ——— High Court, Bombay—*Stat. 3 & 4 Vict., c. 65, s. 6—Stat. 24 Vict., c. 10*.—The Stat. 3 & 4 Vict., c. 65, s. 6, does not confer jurisdiction upon the High Court of Bombay on its Admiralty side to entertain causes for necessaries supplied to foreign ships, that statute not extending to India. The Stat. 24 Vict., c. 10 (Admiralty Act of 1860), does not extend to India. The jurisdiction of the High Court on its Admiralty side is the same as that exercised in the Court of Admiralty in England prior to the passing of the above statutes. The extent and nature of that jurisdiction considered and explained. IN RE THE PROCEEDS OF THE "ASIA." EX-PARTE HORMASJI

[5 Bom., O. C., 64

212. ——— *Stats. 3 & 4 Vict., c. 65, 24 Vict., c. 10, and 26 & 27 Vict., c. 24.*—The Imperial Stat. 3 & 4 Vict., c. 65, 24 Vict., c. 10, and 26 & 27 Vict., c. 24, do not apply to the Admiralty or Vice-Admiralty jurisdiction of the High Court. On that point, *The Asia, 5 Bom., O. C., 64*, followed. [illegible]

[illegible] upon the high seas between two foreign vessels al- [illegible]

213. [illegible] *Collision between* [illegible]

[1 Hyde, 275

214. ——— *Suits for damages for collision—Cross-suit—Residence out of jurisdiction.*—One who has sued for damages caused by a collision at sea, and out of the jurisdiction of the High Court, subjects himself to a cross-

JURISDICTION—*continued.*

3. SUITS FOR LAND—*continued.*

202. ——— Possession, Suit for—*Suit for property in different districts.*—In a suit to

action against different defendants had been joined in the same suit contrary to the provisions of s. 12,

203. ——— *Civil Procedure Code (1882), ss. 16, 19, and 45—Joinder of causes of action—Suit for recovery of possession of immoveable property within the territorial jurisdiction of different Courts*—Where certain plaintiffs claimed possession of separate portions of land situated in two different districts on the same title against the same defendants alleging a dispossession on one day from part of the property claimed in district A, and from the whole in district B, and on another day from the rest of the property in district A,—*Held*

to. HARCHANDAR SINGH v. LAL BAHADUR SINGH [I. L. R., 16 All., 359

204. ——— Rent—*Suit for rent of a fishery—Uncertainty as to jurisdiction—Code of Civil Procedure (1882), s. 16A—Immoveable property.*—A suit for rent of a fishery is a suit for immoveable property within the meaning of s. 16A of the Code of Civil Procedure. *Fadu Jhala v. Gour Mohun Jhala, I. L. R., 19 Calc., 544*, referred to. A suit for rent of a fishery was brought in a certain Court, and there was reasonable ground of uncertainty as to the jurisdiction of that Court to entertain the suit. On an objection that the suit ought to fail for want of jurisdiction,—*Held* that the conditions required by s. 16A of the Civil Pro-

205. ——— Sale under mortgage—*Tarai Regulation (IV of 1876)—Civil Procedure Code (1882), ss. 1, 2, 19, and 24—Mortgage of property situated partly in the district of Moradabad and partly in the Tarai—Suit for sale in Moradabad Court—Transfer of Property Act (IV of 1882), s. 88.* *Held* that the Courts of the Moradabad

applied, by reason merely of a portion of the property mortgaged being situate in the Moradabad district. RAM RATAN v. LALTA PRASAD [I. L. R., 17 All., 483

206. ——— Decree, Effect of—*Property in two different districts—Leave of Court.*—Where property was situated in Bhagulpore and other property in Tirhoot, and no leave had been obtained to include the property in Bhagulpore,—*Held* a decree in the Tirhoot Court could have no effect as against the property in Bhagulpore. BUNGSEE SINGH v. SOODIST LAL [I. L. R., 7 Calc., 739: 10 C. L. R., 263

207. ——— Power of Appellate Court to give leave—*Civil Procedure Code, 1859, s. 12—Remand, Order in nature of—Property in different districts—Decrees of District Courts—Power of Appellate Court to amend.*—Neither under s. 12 of Act VIII of 1859 nor in any other way has the High Court in its appellate capacity power to give jurisdiction to a District Court to enquire into facts, as upon a remand, in a suit decided in the Court of another district, and relating to lands in the latter. Of two mortgages between the same parties the first comprised four villages, of which three were ... in district ... addition to ... B. Suits ... of the mortgagee against the mortgagor were thus framed, *viz.*, in the suit in district A for possession upon foreclosure of both mortgages, and for a declaration of the plaintiff's right as purchaser of one of the properties; and in the suit in district B, for payment of the debt on the second mortgage. Both suits were dismissed. The High Court, hearing appeals in both suits together, affirmed the dismissal of the suit in district B, and remanded the other to the Court of first instance in district A, to have the proportionate value of the properties determined, with a view to the apportionment of the liabilities of the parties by way of contribution. As the defendant, who succeeded in both suits in the District Courts, raised no question of jurisdiction, each of them might be taken to have had the consent of parties to its hearing the whole suit before it. But

conferred upon the High Court by provisions in the

208. ——— Power of High Court to sanction trial in Sonthal Pergunnahs—

JURISDICTION—*continued.*

3 SUITS FOR LAND—*concluded.*

Civil Procedure Code, 1859, ss 12 and 386—Suit for land above R1000—Beng Reg. III of 1872, s. 2—Bengal Civil Courts Act (VI of 1871)—Act VIII 1859 was in force in 1876 in the Sonthal Pergunnahs under s. 2, Bengal Regulation III of 1872, as regards suits triable in Courts constituted under Act VI of 1871 S. 4 of that Regulation (read with the notification of the Lieutenant-Governor, dated 4th August 1873) vesting the Deputy Commissioner of the district of the Sonthal Pergunnahs with the powers of a District Judge as described in Act VI of 1871 had the effect of making the Sonthal Pergunnahs a district as defined by s 386 of Act VIII of 1859; and therefore, under s 12 of Act VIII of 1859 the High Court had power to sanction the trial of a suit for land situated in the Sonthal Pergunnahs in which the value of the subject-matter exceeds R1 000 in the Civil Court competent to try it KALIPROSAD RAI *v.* MEHER CHANDRO ROY

[I. L. R., 4 Calc., 222: 2 C L. R., 478

209. — — Execution of decree made by Court without jurisdiction—*Place of suing—Suit for sale of mortgaged property—Civil Procedure Code, ss 16, 20.*—In 1879 *R* gave *J* a bond containing a simple mortgage of immoveable property. Subsequently *R* and *P* jointly gave *D* a bond containing a simple mortgage of the same property In 1881 *D* obtained a decree for the sale of the property under his mortgage, and it was put up for sale and purchased by the plaintiffs. In 1882 *J* obtained a decree in the Court of the Munsif of G (within the local limits of whose jurisdiction the property was not situated) for enforcement of his mortgage-bond by sale of the property The plaintiffs

Code, the Munsif had no power under the law to direct enforcement of hypothecation against immoveable property situate beyond the local limits of his jurisdiction; and nither the proviso to s. 16 nor s. 20 of the Code met the circumstances. *Held* therefore that the plaintiffs were entitled in this suit to have

GUDRI LAL *v.* JAGANNATH RAM

[I. L. R., 8 All., 117

4 ADMIRALTY AND VICE-ADMIRALTY JURISDICTION.

See MERCHANT SHIPPING ACT, 1875, s 3.

[I. L. R., 5 Calc., 453

210. ———Supreme Court, Bombay, Charter of—*English Admiralty rules.*—The Bombay Charter, December 1823, established the Admiralty jurisdiction of the Supreme Court, "as the same is used and exercised in that part of Great Britain called England, together with all and singular their incidents, emergents, and dependencies annexed and connexed causes whatsoever; and to proceed sum-

Bombay in maritime causes. LOUGHNAN *v.* JOOSUB BHULLADINA . . . 5 Moore's I. A., 137

211. ——— High Court, Bombay—*Stat. 3 & 4 Vict., c 65, s. 6—Stat. 24 Vict., c. 10*—The Stat 3 & 4 Vict, c. 65, s 6, does not confer jurisdiction upon the High Court of Bombay on its Admiralty side to entertain causes for necessaries supplied to foreign ships, that statute not extending to India. The Stat. 24 Vict, c. 10 (*Admiralty Act of 1860*), does not extend to India The jurisdiction of the High Court on its Admiralty side is the same as that exercised in the Court of Admiralty in England prior to the passing of the above statutes. The extent and nature of that jurisdiction considered and explained. IN RE THE PROCEEDS OF THE "ASIA." EX-PARTE HORMASJI

[5 Bom., O. C., 84

212. ——— *Stats 3 & 4 Vict., c 65, 24 Vict, c 10, and 26 & 27 Vict., c. 24*—The Imperial Stat. 3 & 4 Vict., c. 65, 24 Vict, c. 10, and 26 & 27 Vict., c. 24, do not apply to the Admiralty or

213. ——— Collision—*Collision between*

[1 Hyde, 275

214. ——— *Suits for damages for collision—Cross-suit—Residence out of jurisdiction*—One who has sued for damages caused by a collision at sea, and out of the jurisdiction of the High Court, subjects himself to a cross-

JURISDICTION—*continued.*

4. ADMIRALTY AND VICE-ADMIRALTY JURISDICTION—*concluded.*

suit for damages caused by the same collision, although himself residing out of the jurisdiction

215. ———— High Court, Jurisdiction of—*Power to arrest ship for repairs.*—The High Court has no power in its Vice-Admiralty jurisdiction to arrest a British-owned ship for repairs. HOWRAH DOCKING COMPANY *v* THE "JEAN LOUIS" [Cor., 113; 2 Hyde, 255

216. ———— *24 Vict, c. 10 (Admiralty Act, 1861)—26 Vict, c. 24 (Admiralty Act, 1863).*—24 Vict., c. 10 (The Admiralty Act, 1861), and 26 Vict, c. 24 (The Vice-Admiralty Act, 1863), extend to India The High Court, as constituted by the Charter of 1862, had not, by virtue of the Admiralty Act, 1861, or otherwise, any jurisdiction over claims for disbursements

tain the claim of the master for wages and disbursements on account of the ship. IN THE MATTER OF THE SHIP "PORTUGAL" . 6 B. L. R., 323

217. ———— Judge of Moulmein, Jurisdiction of—*Suit on bottomry bond.*—A suit will not lie on an ordinary bottomry bond given by the master of a vessel against the owner to recover the amount thereof Such a suit cannot be brought in the Court of the Judge of the town of Moulmein, which has no Admiralty jurisdiction against the owner personally, and the vessel cannot be declared to be primarily liable or be sold to satisfy the amount of the bond. GLADSTONE, WYLLIE & CO. *v* HARRISON . . . 24 W. R., 50

218. ———— Vice-Admiralty jurisdiction—*Vice-Admiralty Regulations of 1862—Practice under Code of Civil Procedure—Procedure—Pleadings.*—In Vice-Admiralty cases, the effect of

Council rules issued under 2 & 3 Will IV, c. 51, have no operation, except in case of suits *in rem* in which no appearance has been entered, and other matters to which the Procedure Code cannot be applied. The enactments and rules affecting the Vice-Admiralty jurisdiction reviewed and examined. *In the matter of the ship "Champion," I. L. R., 17 Calc, 66,* referred to IN THE MATTER OF THE SHIP "FANNIE SKOLFIELD" . I. L. R., 17 Calc., 337

JURISDICTION—*continued.*

5. MATRIMONIAL JURISDICTION.

See CASES UNDER DIVORCE ACT, s. 2.

219. ———— High Court, Calcutta—*Parties resident within jurisdiction.*—The High Court at Calcutta, in its matrimonial jurisdiction, had before the Divorce Act, 1869, jurisdiction only over parties actually resident within its local limits. THOMPSON *v.* THOMPSON . Bourke, Mat., 1

220. ———— Supreme Court, Bombay, Ecclesiastical side—*Suit for restitution of conjugal rights—Parsis.*—The Supreme Court of Bombay on its Ecclesiastical side declared incompetent to entertain a suit for the restitution of conjugal rights at the instance of a Parsi wife against her husband. ARDASEER CURSETJEE *v.* PEROZEBOYE [4 W. R., P. C., 91: 6 Moore's I. A., 348

221. ———— Civil Court, Jurisdiction of—*Suit by Mahomedan husband for restitution of conjugal rights.*—A Mahomedan husband may sue in the Civil Courts of India to enforce his marital rights by compelling his wife to return to cohabitation with him, and such suit must be determined according to the principles of Mahomedan law in such a case Bengal Regulation IV of 1793, s. 15. BUZLOOR RUHEEM *v.* SHUMSOONISSA BEGUM. JUDOONATH BOSE *v.* SHUMSOONISSA BEGUM [8 W. R., P. C., 3: 11 Moore's I. A., 551

6. TESTAMENTARY AND INTESTATE JURISDICTION.

222. ———— High Court, Jurisdiction of—*Appeals.*—The High Court has jurisdiction to hear appeals in testamentary cases. SARODASOONDERY *v.* TINCOWRY NUNDY . . 1 Hyde, 70

223. ———— *Power to compel native to prove will*—The High Court cannot compel a native to prove a will in solemn form, unless he have applied for probate, and thus submitted himself to the jurisdiction IN THE MATTER OF TIRUVALUR KIRUSTNAPPA MUDALI . . 1 Mad., 59

224. ———— *Probate or letters of administration of British-born subject dying in Moulmein*—In the case of a British-born

of administration, with the will annexed, from the High Court in Bengal. SAUNDERS *v.* NGA SHOAY GEEN . . . . 8 W. R., 3

225. ———— *Reference by executor and caveator to arbitration of question as to due execution of will—Effect of award—Jurisdiction of testamentary Court to recognize arbitration proceedings and award—Application for*

JURISDICTION—*concluded.*

6. TESTAMENTARY AND INTESTATE JURISDICTION—*concluded.*

filed denying the execution of the alleged will, and the matter was duly registered as a suit. The executor and the caveatrix subsequently referred "the dispute" to arbitration, and an award was made that the alleged will had not been duly executed. The executor nevertheless subsequently continued the suit. At the hearing the caveatrix pleaded the award and contended that it was binding on the plaintiff (executor). The plaintiff (executor) contended that the Court as a Court of probate had [illegible]

This case was reversed on appeal, the Court [illegible] him was duly executed by the deceased. GHELLABHAI ATMARAM *v.* NANDUBAI

[I. L. R., 21 Bom., 335

JURISDICTION OF CIVIL COURT.

JURISDICTION OF CIVIL COURT—*continued.*

See ABATEMENT OF RENT.
[1 B. L. R., F. B., 93

See ACT IX OF 1847, ss. 6, 9.
[I. L. R., 14 Calc., 67
I. L. R., 17 Calc., 590
L. R., 17 I. A., 40

See ACT XX OF 1863.
[15 B. L. R., 167 : 23 W. R., 453
I. L. R., 3 Calc., 324
2 C. L. R., 128
I. L. R., 4 Mad., 157
I. L. R., 9 Calc., 133
I. L. R., 17 Mad., 212

See BENGAL ACT III OF 1870.
[13 B. L. R., 214, 215 note; 216 note; 217 note

See COLLECTOR . I. L. R., 5 All., 314
[I. L. R., 9 All., 43
I. L. R., 11 Bom., 478
I. L. R., 12 Bom., 371
I. L. R., 11 All., 94

See CASES UNDER JURISDICTION OF REVENUE COURT.

See CASES UNDER PARTITION—JURISDICTION OF CIVIL COURTS IN SUITS RESPECTING PARTITION.

See CASES UNDER PENSIONS ACT, 1871, s. 4

See CASES UNDER RIGHT OF SUIT

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MILITARY MEN.
[2 B. L. R., S. N., 3, 7

See SONTHAL PERGUNNAHS SETTLEMENT.
[I. L. R., 18 Calc., 133, 146
I. L. R., 22 Calc., 473

JURISDICTION OF CIVIL COURT —*continued.*

1. ABUSE, DEFAMATION, AND SLANDER.

1. ——— Abuse—*Suit for damages.*—A

SREENATH MOOKERJEE *v.* KOMUL KURMOKAR [16 W. R., 83

KANOO MUNDLE *v.* RAHUMOOLLAH MUNDLE [W. R., 1864, 269

GHOLAM HOSSEIN *v.* HUR GOVIND DOSS [1 W. R., 19

TUKYE *v.* KHOSHDEL BISWAS 6 W. R., 151

OJSEEMOODDEEN *v.* FUTTEH MAHOMED [7 W. R., 259

2 ——— *Suit for damages for verbal abuse—Hindus in mofussil of Bombay—Special damage.*—In a suit between Hindus in the Bombay mofussil damages may be recovered for mere verbal abuse, without proof of actual damage resulting therefrom to the plaintiff KASHIRAM VALAD KRISHNA *v.* BHADU BAPUJI 7 Bom., A. C., 17

3. ——— *Suit for damages*

CLAY . . . . . . 8 W. R., 256

And *see* NILMADHAB MOOKERJEE *v.* DOOKEERAM KHOTTAH . . . 15 B. L. R., 161

MOOZYFERUNNISSA BIBEE *v.* MAHOMED HOSSEIN [15 B. L. R., 166 note

HOSSEIN *v.* BAKIR ALI . W. R., 1864, 302

PHOOLBASEE KOOER *v.* PAHJUN SINGH [12 W. R., 369

4. ——— *Action for abuse without proof of special damage—Malicious defamation*—The rule of English law which prohibits,

[I. L. R., 8 Mad., 175

5. ——— Defamation—*Slander—Defamation—Verbal abuse—Special damage.*—A suit to recover d
may be
damage.

6. ——— *Slander—Damages—Consequential damage.*—A suit for damages for

JURISDICTION OF CIVIL COURT —*continued.*

1. ABUSE, DEFAMATION, AND SLANDER —*concluded.*

C. L. R., 191, followed. TRAILOKYA NATH GHOSE *v.* CHUNDRA NATH DUTT I. L. R., 12 Calc., 424

7. ——— *Cause of action—Damages for insult, loss of reputation, and mental*

father, that is, ironically, bastard), apart from defamation, is not actionable irrespective of any special damage. *Per* GHOSE, J.—A case like the present should be decided according to the principles of

DHARI SADUKHAN . I. L. R., 26 Calc., 653 [3 C. W. N., 551

2. CASTE.

8. ——— Suits as to caste questions —*Suit for restoration to caste and for damages*

See SUDHARAM PATAR *v.* SUDHARAM [3 B. L. R., A. C., 91

9. ——— *Bom. Reg. II of 1827, s. 1—Suit for certain fees as mehtars.*—The plaintiffs sued to recover from the defendant certain fees alleged to be due to them, as mehtars of the caste, on the marriage of the daughter of the defendant. The defendant denied that the plaintiffs were his

10. ——— *Dispute as to*

JURISDICTION OF CIVIL COURT —*continued*

2. CASTE—*continued.*

turn, for periods of fifteen days, take, respectively, gifts made during such period. The plaintiff claimed and sued to recover a gift presented to some of the defendants during a period at which, under the terms of the award, he was entitled to the family gains. *Held* that the claim made in the suit differed *in toto* from a claim to a voluntary or a personal offering, and that it was entertainable in a Civil Court DOORGA PERSHAD *v.* BUDREE . . . 6 N. W., 169

11. ——— *Suit for recovery of money value of holy cakes—Question of religious character.*—The plaintiffs, members of the Tengalai sect of Brahmins, sued the defendants, the trustees of a temple at Conjeveram, for the recovery of the money value of certain holy cakes which they alleged [illegible]

declared themselves entitled on condition of reciting certain hymns; and that undoubtedly the right to such benefits is a question which the Courts are bound to entertain. NARASIMMA CHARIAR *v.* KRISTNA TATA CHARIAR . . . . . 6 Mad., 449

12. ——— *Suit as to religious rights and ceremonies—Suit by Temple Committee against poojaris—Civil Procedure Code,* [illegible]

Hindu temple, to compel the hereditary priests of the temple to take out certain ornaments from the treasury of the managing committee, and to place [illegible]

[I. L. R., 5 Bom., 80

13. ——— *Jurisdiction in matters of religion—Cause of action—Dancing-* [illegible]

JURISDICTION OF CIVIL COURT —*continued.*

2. CASTE—*continued.*

public worship, she was entitled to relief from a Civil Court. VENGAMUTHU *v.* PANDAVESWARA GURUKAL [I. L. R., 6 Mad., 151

14. ——— *Suit to recover cooking-vessels—Bom. Reg II of 1827, s. 21.*—A claim by the members of one division of a caste against the members of the other division of that caste, for recovery of half of certain vessels belonging to the caste or their value, is a caste question within the meaning of s. 21 of Regulation II of 1827, and cannot be made the subject-matter of a suit cognizable by a Civil Court GIRDHAR *v.* KALYA [I. L. R., 5 Bom., 83

NEMCHAND *v.* SAVAICHAND [I. L. R., 5 Bom , 84 note

15. ——— *Bom. Reg. II of* [illegible]

16. ——— *Dispute as to right to office of khatib—Mahomedan law—Bom. Reg. II of 1827, s. 21.*—S. 21 of Regulation II of 1827 has no application to suits between Mahomedans. A dispute as to the right to an office, such as the office of khatib (or preacher) is said to [illegible]

AHMED SAHEB *v.* HUSEINSHA VALAD KARIMSHA FAKIR . . . I. L. R., 13 Bom., 429

17. ——— *Powers of the head of a caste in respect of caste customs.*—In a matter relating to caste customs over which the ecclesiastical chief has jurisdiction, and exercises his jurisdiction with due care and in conformity to the usage of caste, the Civil Courts cannot interfere. A guru as head of a caste has jurisdiction to deal with all matters relating to the autonomy of caste according to recognized caste customs. *Queen* v. *Sankara, I. L. R., 6 Mad., 381,* and *Murari* v. *Suba, I. L. R., 6 Bom., 725,* cited and followed. GANAPATI BHATTA *v.* BHARATI SWAMI [I. L. R , 17 Mad., 222

18. ——— *Suit for right to exclusive worship—Bom. Reg. II of 1827, s. 21—*

JURISDICTION OF CIVIL COURT —*continued.*

2 CASTE—*continued.*

dants, members of the ... caste, ... privileged castes, infringed that right in 1871 and

Court, and not a caste question The meaning of s 26 of Regulation II of 1827 is that the internal economy of a caste is not to be interfered with by the Courts, not that no possible matter of litigation in which a question of caste usage, or right, or privilege may arise can be taken cognizance of. ANANDRAV BHIKAJI PHADKE *v.* SHANKAR DAJI CHARYA

I. L. R., 7 Bom., 323

19. ———————— *Bom Reg. II of 1827, s. 21—Resolution of caste excluding Brahmans from caste feasts—Majority of caste, Right of.*—The plaintiffs and defendants were members of the Kutchi Dossa Oswal caste of Hindus residing in Bombay. The plaintiffs alleged that by a resolution of the caste unanimously passed at a caste meeting held on the 19th September 1893, a committee, of which they were members, was appointed on behalf of the caste for the purpose of

any casteman, wishing to feast Brahmans in the oart, to use the caste oart and caste vessels, and, if necessary, to take legal steps in the matter. The plaint alleged that the defendants proposed to give a feast in the caste oart, to which they had invited Brahmans, and prayed for an injunction, and for a declaration that the above resolutions were validly passed and were binding upon the defendants and

not binding on them ...

that the plaintiffs or any members of the caste had now a right to exclude them The Court found as a fact that a large majority of the caste were in favour of excluding Brahmans from caste feasts *Held* that the majority of the caste having arrived at a *bonâ fide* decision that the convenience and comfort of the caste were best advanced by the exclusion of the Brahmans from their oart, it was not a case in which the Court could say that the decision was so subversive of the interest of the minority as to amount to a practical confiscation of their property or denial of their rights and that the Court ought to give effect to it. The Court accordingly passed a decree in terms of the prayer of the plaint prohibiting the defendants from bringing Brahmans into the oart to dine so long as the resolution of the caste prohibiting the practice continued in force. The Court does not decline to give effect to the expressed wishes of the majority of a caste as to the management and custody of caste property, which the minority seek to set at naught, by reason of the suit involving a caste question In matters relating to the management of caste property and the administration of its affairs, the majority of the caste has authority to control the minority. But the Court will not by its decree enable the majority to make a tyrannical use of its power. It would not assist the majority to deprive without cause the minority of their right to use what is the common property of all, or give effect to a resolution passed in violation of the rules of natural justice or of a directly confiscatory nature. LALJI SHAMJI *v.* WALJI WARDHMAN . . . I. L. R., 19 Bom., 507

20. ———————— *Bom. Reg. II of 1827, s. 21—Arrangement between members of the caste for the purpose of paying off the debts of the caste—Mahomedans.*—The term "caste" in s 21 of Regulation II of 1827 is not necessarily confined to Hindus, but comprises any well-defined native community governed for certain internal purposes by its own rules and regulations An agreement embodying an arrangement come to between members of the caste for the purpose of paying off the debts of the caste, out of certain contributions to the caste funds, involves a caste question, and a suit on such agreement is not maintainable in the Civil Courts. ABDUL KADIR *v.* DHARMA . . . I. L. R., 20 Bom., 190

21. ———————— *Mochi caste at Surat—Dismissal of delegates by the caste—Suit for injunction and damages.*—The hereditary priests of the Mochi caste deputed certain persons to perform religious ceremonies for the caste The caste, however, dismissed these delegates, and the defendants, who were members of the caste, employed other persons to perform certain religious ceremonies for them The plaintiffs sued for an injunction and damages, alleging that they were entitled to perform these ceremonies and to receive the fees *Held* that the Court had no jurisdiction. The Civil Court could not enquire into the validity or otherwise of the decision of the caste in the matter. The parties were bound by it, and the

JURISDICTION OF CIVIL COURT —*continued.*

2. CASTE—*continued.*

plaintiffs could not legally complain of the action of the defendant, who had done no more than obey that decision. DAYARAM HARGOVAN *v* JETHABHAT LAKHMIRAM . I. L. R, 20 Bom., 784

22 ——— *Bom Reg. II of 1827, s 21—Suits to recover caste property from a member of the caste*—S. 21 of Regulation II of 1827 does not debar a Civil Court from taking cognizance of a suit in which a question of a caste rule or of membership of a caste may be raised by way of answer to a claim for property or on a breach of contract. The section provides that there shall be no interference on the part of the Court in caste questions. But to take evidence of the customary law of a caste, to recognize the law and the vote of a majority as given effect to by the law, is not to interfere in caste questions, it is simply to recognize the existence of caste as corporations with civil rights and an autonomy suitable to the purposes of their existence. Certain members of one division of a caste borrowed vessels for use from the priest of that division, and then seceding to the other division refused to return them A suit was brought to recover possession of the vessels in question. *Held* that the suit was cognizable by the Civil Court, notwithstanding that incidentally a question as to the relations of the caste divisions might arise for decision PRAOJI KALAN *v.* GOVIND GOPAL . . I. L. R, 11 Bom., 534

23. ——— *Secession from a caste—Property purchased by seceding section during period of secession—Reunion of section with the caste—Suit by caste to recover from a seceding member property purchased by seceding*

year 1868, certain lands were purchased by the small section in the names of the plaintiff, the defendant and three other persons. In 1873 the members of the small section, with the exception of the defendant, reunited with the other members of the caste. The lands, however, remained in the possession of the defendant. The plaintiff, on behalf

out of their own funds and for their own purposes by the members of the caste who had seceded; and the question as to whom those lands now belonged to, being one between the caste and one of the seced-

it might be incidentally necessary for that purpose to enquire into the usage and practice (if any) of caste sections situated as the seceding section of this caste had been with respect to the property in question. If the lands had been originally the property of the caste, the question would have been between the caste and a section of it, and would have been a caste question, and not cognizable by the Civil Court. MEHTA JETHALAL *v.* JAMIATRAM LALUBHAI . . . I L. R, 12 Bom., 225

24. ——— *Civil Procedure Code, s. 11—Hindu Marriage Act (XV of 1856), s. 5—Hindu law, marriage—Widow remarriage—Exclusion from temple—Excommunication.*—The plaintiff, who was a Smarta Brahman, but had married a widow (whose first marriage had not been consummated), alleged that he had made a vow to present an offering in a certain temple, and that the defendants, who were the committee of the temple, had obstructed and prevented him from entertaining the inner shrine (where orthodox Brahmans usually make their offerings), asserting that he was disqualified to enter by reason of his having married a widow contrary to Hindu shastras; and he sued for damages for the above obstruction and imputation, for a declaration that he was entitled to enter the shrine as a Brahman, and for an injunction restraining the defendants from interfering with his exercise of this right. *Held* (1) that the right claimed was of a civil nature and within the

tion of caste status in respect of a caste institution; (3) that in order to determine the above question, the Courts must inquire (a) what was the usage of

according to such usage or presumable intention of the foundation, those who secede from the caste

25. ——— *Right of suit by bhakats of religious fraternity expelled by other members for re-admission into fraternity*—

their forefathers had been from generation to

JURISDICTION OF CIVIL COURT
—*continued.*

2 CASTE—*continued.*

generation in receipt of the honorarium and offerings, and had been performing the rites and ceremonies

the kirtanghar. The prayer of the plaint was that the plaintiff's right to enter the kirtanghar to per-

be granted enjoining the defendants not to obstruct them in such performance. The defendants, who
of the frater-
ntire body of
the plaintiffs
was governed
by the satria and a select body of bhakats, that the plaintiff No 1 had received mantra or spiritual initiation from one Saruram, contrary to the rules of the fraternity, and had been convicted, moreover, of a criminal offence, and a fine of R100 had accordingly been imposed on him and his partizans by the governing body of the satra, whose orders they had disobeyed by refusing to pay the fine, and they had therefore been excluded from entering the kirtanghar; and the defendants contended that the Civil Court had no jurisdiction in the matter, and that the suit was therefore not maintainable. The lower Courts held that the Civil Court could entertain the suit, and they made decrees practically ordering the admission of the plaintiffs to the kirtanghar on their complying with the order imposing the fine. *Held* that the rules laid down in the English cases as to expulsion from clubs or voluntary associations which people are free to join or not, and where any one who joins may well be taken to be bound not only by its general rules, but also by any special orders made by its members with regard to him in accordance with those rules, are not applicable with regard to caste unions or religious fraternities in India, to which people belong not of choice, but of necessity, being born in their respective castes, or sects, and the consequences of exclusion from which are far more serious and affect a person's status in a far greater degree than those of expulsion from a club. In such religious castes or fraternities the protection of Courts of justice, even though presided over by Judges of a different religious persuasion, against expulsion, is much more needed than in clubs or voluntary associations. Cases of expulsion from them were

615, distinguished. *Gopal Gurain* v. *Gurain, 7 W. R.,* 299, and *Ramkant* v. *Ram Lochan, S. D. A., 1859, p. 535,* followed *Advocate General of Bombay* v. *Haim Devakar, I. L. R., 11 Bom., 185,* not followed. *Held,* further, that even if the rules laid down in the English cases were applicable, they were subject to a qualification which leaves it open to a

JURISDICTION OF CIVIL COURT
—*continued.*

2. CASTE—*continued.*

Court of Justice to interfere with the decision of a private association on grounds, one of which is that the decision is contrary to natural justice. The
the
on
was
the
domestic tribunal of the parties as is opposed to the cases cited as to clubs, etc, as it would have been contrary to natural justice for the fraternity to enforce such exclusion after the reason for it had ceased, and make the disqualification of the plaintiffs permanent. *Held,* on the statements in the plaint, that the plaintiffs had a cause of action, and the suit

JAGANNATH CHURN *v.* AKALI DASSIA
[I. L. R., 21 Calc., 463

26. ——————— *Infringement of*

enforced by caste—Bom. Reg. II of 1827, cl. 21, s. 1—Cause of action—Right of suit—Onus probandi.—In the year 1887, some members of the Pathare Kshatria caste considered that the outlay in

together forming the resolution, were printed and sent to the various divisions of the caste with a letter. The letter expressed the hope that the

section approved of the resolution and acted on it. In May 1888, the plaintiff's grandnephew's munj

JURISDICTION OF CIVIL COURT —*continued.*

2 CASTE—*continued.*

stopped. A correspondence then took place between the plaintiff and *D*, in which the plaintiff alleged that the rules in question had not been laid down by the whole body of the caste, and that they were frequently transgressed. He declined to pay any attention to communications on the subject. A meeting of the Girgaum section of the caste was then held, at which twenty-two members were present, and a resolution was passed, declaring that the plaintiff had transgressed the caste rules, and depriving him of the man-pan invitation by the caste until a contrary resolution should be arrived at by the Chargaum and Desh. It was also ordered that this resolution should be communicated to the Chargaum (local divisions of the caste) and Desh (head-quarters of the caste), which subsequently accepted and approved of the resolution, which thus became known to the whole caste. The defendants were among the twenty-two members of the Girgaum section of the caste who

depriving of the plaintiff of this invitation is equi-

action of which the Court could take cognizance. The plaintiff had not been libelled by the publication of the resolution. The facts stated in the resolution were all true, and the publication of true statements

interest of the caste to know. So far, therefore, as

JURISDICTION OF CIVIL COURT —*continued.*

2 CASTE—*concluded.*

question was a sumptuary rule, and there was no reason why the caste should not enact it if it pleased. Among the issues raised by the defendant on the pleadings were the following, *viz.*, (3) whether the rules were not duly approved and adopted by the caste, and (6) whether the publication of the resolution was not privileged. It was contended for the plaintiff that the burden of proving these issues was on the defendant, and that he (the plaintiff) might reserve his evidence on them until the defendant had

27 ———————— *Excommunication —Court's power to inquire into the validity of the order of excommunication—Burden of proof.*—The plaintiff, who was pujari of a Jain temple, sued for an injunction to restrain the defendants from entering

defendants
passed on
proper inqu

28. ———————— *Excommunication of member from caste—Presumption of good*

3. COURT OF WARDS.

29. ———— Suit against Court of Wards—*Superintendence over minor.*—No civil action will lie against the Court of Wards in respect

The Court subsequently in this case declined to pass an order to stay the minor's removal under an order of the Board of Revenue directing such removal to the Ward's Institution in Calcutta, pending an appeal to the Privy Council, holding that it had no power to make such order. COLLECTOR OF BEERBHOOM *v.* MUNDAKINEE DEBEE . 1 W. R., Mis., 7

And afterwards held that the Civil Court was competent to carry out an order that the Court of

JURISDICTION OF CIVIL COURT —*continued.*

3. COURT OF WARDS—*concluded.*

Wards was entitled to the custody of the minor MUNDAKINEE DEBEE v. COLLECTOR OF BEERBHOOM [1 W. R., Mis., 27

30. ———— Power of High Court—*Restraining Court of Wards from bestowing minor in marriage.*—The High Court cannot restrain the Court of Wards, whether acting with or without jurisdiction, from interference in the bestowal in marriage of a minor. GUJADHUR PERSHAUD v. NARAIN SINGH . . . 5 W. R., Mis., 41

4. CUSTOMARY PAYMENTS.

31. ———— Vatandar kulkarni and raiyat—*Bombay Hereditary Office Act (III of 1874)—Perquisites, Right to.*—Bombay Act III of 1874 does not deprive the Civil Court of its jurisdiction to try the question whether a vatandar kulkarni is entitled to receive perquisites from his raiyat. VISHNU HARI KULKARNI v. GANU TRIMBAK [I. L. R., 12 Bom., 278

32. ———— Suit for a declaration that plaintiff was kadim naik, and that defendant was not entitled to any payment from him in respect of the Government revenue payable by the plaintiff—*Act XI of 1852, s. 7—Inamdar of the village—Government not a party.*—In a suit for a declaration that the plaintiff was the kadim naik of a particular village, and that the defendant, who was the inamdar of the village, was not entitled to levy any contribution from the plaintiff in respect of the sum which the defendant had to pay to the Government as agreed upon between him and the Government, the lower Court dismissed the claim for want of jurisdiction under s. 7 of Act XI of 1852 and for non-joinder of Government as a party. [illegible] Court, [illegible] whether [illegible] defen- [illegible] of 1852, [illegible] a sum- [illegible]

[I. L. R., 16 Bom., 649

5. DUTIES OR CESSES.

33. ———— Suit for fees from persons using market-place.—*Held* that a claim to receive fees as chowdhree from persons using a certain market-place is not a right which can be enforced by the Courts of law. BHINUK CHOWDHREE v. COLLECTOR OF JOUNPORE . . . 2 Agra, 271

34. ———— Claim for dues for privilege of selling pân on hât days—*Revenue Court.*—A claim for a legal due or cess arising out of the privilege of selling pân on hât days is cognizable in the Civil Court. HURRISH CHUNDER KOOND v. GOPAL BAROOTE . . . 3 W. R., Act X, 158

6. ENDOWMENT.

35. ———— Suit for removal of manager of charitable trust on ground of malversation—*Mad. Reg. VII of 1817.*—A suit brought for the removal of defendant from the management of certain charitable trusts on the ground of malversation was dismissed by the Civil Judge, [illegible]

to its enactment. The expression in s. 14 of the Regulation is not intended to limit the jurisdiction of the Courts to the cases contemplated in it, but rather to provide against the finality of erroneous orders that may be passed by the Board of Revenue under the Regulation. PONNAMBALA MUDALIYAR v. VARAGUNA RAMA PANDIA CHINNATAMBIAR [7 Mad., 117

36. ———— Removal of trustees—*Trustees misapplying funds by mistake—Scheme of* [illegible]

[illegible] funds of the institution, and Courts in India can [illegible]

[illegible]

manager of shrine, who has arrogated to himself the position of owner, should be removed from his trust; each case must be decided with reference to its circumstances *Chintaman* v. *Dhondo, I. L. R., 15 Bom., 612*, referred to. DAMODAR BHATJI v. BHAT BHOGILAL KASANDAS . I. L. R., 22 Bom., 493

7. FEES AND COLLECTIONS AT SHRINES.

37. ———— Suit for collections of a shrine—*Right of property in site—Right of office.* [illegible]

38. ———— Suit for share of collections in return for spiritual instruction.—*Held* that a suit for a share of the collections made from "jujmans in return for spiritual instruction" is not cognizable in the Civil Courts. CHOONNEE LAL v. GOUREE SHUNKUR . . . . 1 Agra, 84

JURISDICTION OF CIVIL COURT —*continued.*

7. FEES AND COLLECTIONS AT SHRINES —*concluded.*

39 ——— Suit for share of offerings received by priest—*Contract to pay share of fees.*—A suit will lie by one priest for a share of offerings received by another, if there be a contract to pay over such share. JUGDANUND GOSAMEE *v.* KESSUB NUND GOSAMEE W. R. 1864, 146

But otherwise no suit will lie. MUDDUN MOHUN GHOSAL *v.* NILOBAM CHUCKERBUTTY [2 W. R., 69

40. ——— Suit for share of fees received by Hindu priest—*Contract to pay share of fees.*—The plaintiffs sued the defendants in the Civil Court for a declaration of their right by contract to share in the ministrations at a certain ghat and to recover a sum of 1 77-9 as their share, under the contract, of moneys received by the defendants at that ghat. *Held* the suit would lie. MAGJU PANDAEY *v.* RAMDYAL TEWARI [8 B. L. R., 50 : 15 W. R., 531

BECHARAM BANERJEE *v.* THAKURMANI DEBI [8 B. L. R., 53 note : 10 W. R., 114

CHUNI PANDEY *v.* BIRJO PANDEY [13 C. L. R., 49

41. ——— Suit for fees received by village priest—*Jujman—Employment of another priest to perform service.*—In the presidency of Bombay a village priest can maintain a suit against a jujman who has employed another priest to perform ceremonies, and recover the amount of the fee which would properly be payable to him if he had been employed to perform such ceremonies. As a rule, the ... would afford ... erable by the ... *mile*—A jujman ... priest, if not ... hat which he (the jujman) pays to the priest actually employed, if the latter were not unreasonably large. DINANATH ABAJI *v.* SADASHIV HARI MADHAVE [I. L. R., 3 Bom., 9

8. FERRIES.

42. ——— Suit for compensation for resumption of ferry by Government—*Civil Procedure Code, s. 1—Beng. Reg. VI of 1819.*— ...

43 ——— Invasion of rights of private ferry by Government—*Beng. Reg. VI of 1819, s. 3.*—S. 3, Regulation VI of 1819, while it empowers the Government to invade private rights of ferry by the establishment of a public ferry, does not debar the Civil Court from giving relief in cases in which a Magistrate may, without the sanction of Government, have invaded a private right of ferry, ... from ... iblic ... OF ... W. R., 146

9. FISHERY RIGHTS.

44 ——— Suit for damages and injunction to restrain illegal interference with plaintiff's right to fish in the sea—*Low-water mark.*—The District Court may, when the defendants reside within its local jurisdiction, try a suit ...

[I. L. R., 2 Bom., 19

10. FOREIGN AND NATIVE RULERS.

45 ——— Ruling Chief, Suit against—*Civil Procedure Code (1882), s. 433—Consent of Governor General in Council—Consent given subsequent to institution of suit—Waiver by defendant of objection to consent—Civil Procedure Code, s. 373.*—Under s. 433 of the Civil Procedure Code ...

so that, notwithstanding the absence of a valid consent under the section, the suit can be heard and determined on its merits. CHANDULAL KHUSHALJI *v.* AWAD BIN UMAR SULTAN NAWAZ JUNG BAHADUR [I. L. R., 21 Bom., 351

46. ——— Suit against independent Sovereign Prince—*Personal privilege—Thakur of Palitana.*—An independent sovereign prince is privileged from suit in the Courts of British India. The Thakur of Palitana is an independent sovereign prince. LADKUVARBHAI *v.* SARSANGJI PRATABSANGJI . . . . 7 Bom., O. C., 150

47. ——— Suit against ex-King of Oudh—*Act VIII of 1862, s. 4.*—S. 4, Act VIII of ... W. R., 405

48. ——— Suit against Tipperah Rajah—*Sovereign Prince—Zamindari in British territory.*—The succession to the raj of Tipperah being of itself beyond the jurisdiction of British Civil

JURISDICTION OF CIVIL COURT —*continued.*

10. FOREIGN AND NATIVE RULERS—*continued.*

Courts, it would be out of their power, in a suit relating solely to the title of the Rajah to a zamindari in British territory, to go into the question of the Rajah's title to the raj. The Rajah being a foreign power, the Courts would accept the title to the raj of

tion, been made by the parties themselves to depend, as it were, upon the right to his zamindari, the Civil Courts had jurisdiction to deal with the title to the latter; and that the law applicable to the suit would be the Hindu law modified by the kulachar or local

reign power. *Held* in concurrence with the first Court, upon a consideration of the whole evidence and the conduct of the late Rajah, as well as that of the plaintiff and the Ranis of the late Rajah, that

MUN *v.* BIR CHUNDRA MANIKYA BAHADOOR
[25 W. R., 404, 407 note

49. ——— *Zamindari in British territory—Civil Procedure Code, 1877,*

Nobodip Chundro Deb Burmun v. *Bir Chundra, 25 W. R., 407,* cited BIR CHUNDER MANICKYA BAHADUR *v.* ISHAN CHUNDER THAKUR 3 C. L. R., 417

50. ——— *Sovereign prince —Suit against sovereign prince with respect to*

within the meaning of ch. XXVIII of Act X of 1877, and cannot be sued personally in the Courts of British India except under the conditions specified in s. 433 of that Act. The fact of a defendant not

JURISDICTION OF CIVIL COURT —*continued.*

10. FOREIGN AND NATIVE RULERS—*concluded.*

on immoveable property is not a suit for immoveable property within the meaning of cl. (c), s. 433, Act X of 1877, nor is it a suit for "benefits to arise out of land" within the meaning of the definition of the

entitled to the post of Jubaraj and to succeed to such land on the death of the Rajah, and also claimed maintenance and sought to have it declared that such maintenance should be a charge on the revenues of the land situate in British India. *Held* that the British Courts had no jurisdiction to entertain the suit, it not being one for immoveable property. BEER CHUNDER MANIKKYA *v* RAJ COOMAR NOBODEEP CHUNDER DEB BURMONO
[I. L. R., 9 Calc., 535: 12 C. L. R., 465

51. ——— *Civil Procedure Code, 1877, s. 433—Suit for charge for maintenance*

under cl. (c) of s. 433 of the Civil Procedure Code. BIR CHUNDER MANIKHYA *v.* ISHAN CHUNDER TAGORE . . . . . 12 C. L. R., 473

52. ——— Suit against the Desai of Patadi—*Ruling Chief—Code of Civil Procedure*

11. HÂT.

53. ——— Suit to determine right of

JURISDICTION OF CIVIL COURT —*continued.*

12 MAGISTRATE'S ORDERS, INTERFERENCE WITH.

54. ——— Suit to set aside order of Magistrate opening a road.—The Civil Courts have jurisdiction to set aside an order by a Deputy Magistrate to open a road over lands. KADIR MAHOMED *v.* MAHOMED SAFIR . 1 W. R., 277

55 ——— Interference of Magistrate with private right of way.—The interference of a Magistrate with a private right of way, being an act beyond his jurisdiction, may be remedied by suit in the Civil Courts. SHAM DOSS *v* BHOLA DOSS . . . . 1 W. R., 324

56. ——— Order of Magistrate to remove encroachment.—A regular suit lies in the Civil Court from the proceedings of a Magistrate ordering the removal of an encroachment not treated as a local nuisance ANUND CHUNDER CHATTERJEE *v* ROKHO TARUN CHATTERJEE . 2 W. R., 287

57. ——— Suit to set aside order of Magistrate declaring road public—*Removal of obstruction to road*—The Civil Courts have jurisdiction to entertain a suit, which, if successful, [illegible]

SHODOY GHOSE *v.* JUTTADHAREE HALDAR [7 W. R., 95

58. ——— Suit to set aside order of [illegible]

right to keep up the shed. BAKAS RAM SAHOO *v.* CHUMMUN RAM . . . 7 W. R., 11

59. ——— Suit for declaration of right to land encroached on by road.—A plaintiff is not debarred from suing in the Civil Courts for a declaration of his rights to land encroached upon by the widening of a road, on the ground that the order of the Magistrate directing the road to be kept up as widened is liable to be reversed as illegal. AZEEZOOLLAH GAZEE *v.* BUNK BEHAREE ROY . . . . 7 W. R., 48

60. ——— Suit to set aside order of Magistrate as to private property—*Criminal Procedure Code, 1861, s. 308.*—S. 308 of [illegible]

tion of joint property. ESHAN CHUNDER BANERJEE *v.* NUND COOMAR BANERJEE . 8 W. R., 239

JURISDICTION OF CIVIL COURT —*continued.*

12. MAGISTRATE'S ORDERS, INTERFERENCE WITH—*continued.*

61. ——— Obstructing public road—*Criminal Procedure Code (Act XXV of 1861), s. 320.*—A Magistrate found, under s. 320 of the Criminal Procedure Code, on a dispute between *R* and *P* that the public had been in the habit of using a certain road over *P*'s land for carts, etc, and accordingly directed it to be opened (*i e*, by removal of obstructions). *P* brought a regular suit against *R*, in which the issue was, whether the road was public or not · this was found in the negative, except as to a footpath, costs were apportioned, and the cart-way was ordered to be stopped. *R* appealed on the merits, and *P* filed a cross-objection : the first judgment was affirmed. On special appeal by *R* as to the mode of dealing with the proofs,—*Held* the finding of the Civil Court was beyond its competence, and the suit was not such as contemplated by s. 320, *viz.*, to test the right of " exclusive possession." PYARI LAL *v.* ROOKEE

[3 B. L. R, A. C., 305 : 12 W. R., 199

Upholding on review, ROOKE *v.* PYARI LAL [3 B. L. R, Ap, 43 : 11 W. R., 434

62. ——— Suit to restrain order of [illegible]

duly made by a Magistrate under Ch. XX, s. 308 of the Code of Criminal Procedure, relating to nuisances, or to restrain him from carrying such order into effect. UJALAMAYI DASI *v* CHANDRA KUMAR NEOGI . . 4 B. L. R., F. B, 24

S. C. OOJULMOYE DOSSEE *v.* CHUNDER KOOMAR NEOGEE . . . 12 W. R., F. B., 18

63. ——— Order of Magistrate as to [illegible]

64. ——— Suit for possession and damages after order of Magistrate for removal of hut—*Criminal Procedure Code (Act VIII of* [illegible]
by order [illegible]
damage [illegible]
of Act [illegible]
hut as [illegible]
A claim [illegible]
whom found that the Magistrate's order was reasonable and proper. *A* refused to obey the order, and

JURISDICTION OF CIVIL COURT —*continued.*

12. MAGISTRATE'S ORDERS, INTERFERENCE WITH—*continued.*

his hut was removed under s. 311. *A* sued the Magistrate for possession of the land and for damages. *Held* that such suit would not lie. MEECHOO CHUNDER SARCAR *v.* RAVENSHAW [11 B. L. R., 9 : 19 W. R., 345

65. ———— **Suit for possession after order of Criminal Court**—*Suit to set aside order of Magistrate under s 318, Criminal Procedure Code, 1861—Suit for possession.*—An award of a Magistrate under the Criminal Procedure Code, 1861, s. 318, cannot be set aside by a decree of the Civil Court for possession, but is good to retain [illegible]

right thereto by civil suit for exclusive possession. KALEE NARAIN BOSE *v.* ANUND MOYEE GOOPTA [21 W. R., 79

66. ———— **Suit for ejectment after dispossession of plaintiff under order of Magistrate.**—An ejectment suit on the allegation that the defendants had, under colour of an order of the Magistrate, dispossessed the plaintiff of private property belonging to him, was held to be cognizable by the Civil Court. DEB CHUNDER DOSS *v.* JOY CHUNDER PAL . . 22 W. R., 461

67. ———— **Suit to cancel order of Magistrate**—*Criminal Procedure Code, 1861, s. 62 (Act X of 1872), s. 518—Right to hold* [illegible]

Court. The Civil Courts are, however, bound to respect an order passed by a Magistrate when he is acting within his jurisdiction, *i.e.*, within the powers conferred on him by law, and if his proceedings show due diligence in satisfying himself of the necessity of the order, they cannot question his discretion. In a suit to establish a right to continue a market and to hold it on certain fixed days by cancelment of the order of a Magistrate directing that it should not be held on those days for fear of riot, and of loss to the owner of another market, the plaintiff's right to hold the market on the days named in the plaint was decreed, subject to the prohibition created by the order of the Magistrate. KEDARNATH *v.* RUGHONATH . 6 N. W., 104

68. ———— *Right of way—Criminal Procedure Code, 1872, ss. 521, 523—Estoppel.* A Civil Court is not competent to set aside the order of a Magistrate made under s 521 of the Code of Criminal Procedure, on the ground that such order was made without jurisdiction, because the land in respect of which the order was made is private property, and not a thoroughfare or public place. A Civil Court can, however, irrespective of an order made under s. 521 by a Magistrate, try the question whether the land which formed the subject of such order is private property, and not a thoroughfare or public place, as between the parties to such suit and those who claim under them. *Per* FIELD, *J.*—A person who, on receipt of an order made by a Magistrate under s. 521 of the Code of Criminal Procedure, declaring the existence of a right of way over such person's lands, demands, under s. 523 of the same Code, the appointment of a jury to try whether such order was reasonable, is not by such action estopped from afterwa[illegible] to estal[illegible] the sar[illegible] Ror[illegible]

69. ———— **Suit for declaration of right and confirmation of possession**—*Criminal Procedure Code (Act X of 1882), s. 133—Removal of nuisance—Public way—Cause of action*—On the 6th of July 1882, the Joint Magistrate of Krishnagur, on a complaint made by *A*, ordered *B* to demolish a [illegible]

land as his private property and for confirmation of possession. The plaint did not allege that *B*, in [illegible]

Ram Sahoo v. *Mohi Lal Roy*, *I. L. R.*, *6 Calc.*, *291*, dissented from. KHODABUKSH MUNDUL *v.* MONGLAI MUNDUL . . . I. L. R., 14 Calc., 60

70. ———— [illegible]

suit is not barred by an order of a Criminal Court under s 137 of the Criminal Procedure Code. *Khodabuksh Mundul* v. *Monglai Mundul*, *I. L. R.*, *14 Calc.*, *60*, overruled. CHUNI LALL *v.* RAMKISHEN SAHU . . I. L. R., 15 Calc., 460

71. ———— **Declaration of title to land**—*Specific Relief Act (I of 1877), s. 42—Criminal Procedure Code (Act X of 1882), s. 133—Order by Magistrate under s. 133 of the Criminal Procedure Code for removal of an obstruction standing upon certain land.*—A Magistrate made an order against the plaintiff, under s 133 of the Criminal [illegible]

JURISDICTION OF CIVIL COURT —*continued.*

12. MAGISTRATE'S ORDERS, INTERFERENCE WITH—*concluded.*

jurisdiction of the Court to make the declaration prayed for was taken away by the last clause of s 133, which provides that "no order made by a Magistrate under this section shall be called in question in any Civil Court" *Held* that the Magistrate's order under this section was not a conclusive determination of the question of title. SECRETARY OF STATE FOR INDIA *v* JETHABHAI KALIDAS
[I. L. R., 17 Bom., 293

13. MARRIAGES.

72. Suit to declare Hindu marriage invalid.—A suit for a declaration that an alleged Hindu marriage is invalid is a suit of a civil nature, and will lie in the ordinary Civil Courts. AUNJONA DASI *v* PRAHLAD CHANDRA GHOSE
[6 B. L. R., 243 : 14 W. R., 403

Reversing S. C. . . . 14 W. R., 132

73. ——— A suit to have a Hindu marriage declared invalid, or otherwise, where no rights of property depend on the validity or invalidity of the marriage, cannot be maintained in the Civil Courts under Act VIII of 1859. RAMSARAN MITTER *v.* RAKHAL DASS DUTT
[6 B. L. R., 244 note: 11 W. R., 412

74. ——— Suit to enforce contract of marriage.—A suit to enforce a contract of marriage cannot be entertained in the Civil Courts of this country. BHUGUN *v.* RUNJAN . 24 W. R., 380

75. ——— Suit for breach of contract to give in marriage—*Consideration—Promise by brother to give sister in marriage.*—A certain amount of money had been paid by a Hindu to another in consideration of a promise by the latter that he [illegible] The [illegible] of the [illegible] tled to [illegible] ld lie. JOGESWAR CHAKRABATTI *v.* PANCH KAURI CHAKRABATTI . . 5 B. L. R., 395 : 14 W. R., 154

See RAM CHAND SEN *v.* AUDAITO SEN
[I. L. R., 10 Calc., 1054

And LALLUN MONEE DOSSEE *v.* NOBIN MOHUN SINGH . . . . . . 25 W. R., 32

76. [illegible]

[illegible] Civil Court in British India, and is not within the ruling of the Privy Council in *Nilmony Singh* v. *Kally Churn Bhattacharjee, 14 B. L. R., 382: L. R., 2 I. A., 83.* AZMAT ALI *v.* MAHMUD-UL-NISSA . . . . . I. L. R., 20 All., 96

77. ——— Suit for restitution of conjugal rights.—A suit for restitution of conjugal rights by the husband against the wife will lie in the Civil Courts. JHOTUN BIBEE *v.* AMEER CHUND
[1 Ind. Jur., N. S., 317 : 5 W. R., 105

HUR SOOKHA *v.* POORAN . . 2 Agra, 115

78. ——— *Supreme Court, Bombay, Ecclesiastical side—Parsis.*—The Supreme Court of Bombay, on its ecclesiastical side, was declared incompetent to entertain a suit for the restitution of conjugal rights at the instance of a Parsi wife against her husband. ARDASEER CURSETJEE *v.* PEROZEBOYE
[4 W. R., P. C., 91 : 6 Moore's I. A., 348

14. MUNICIPAL BODIES.

79. ——— Municipal body acting in excess of its jurisdiction—*Control over municipal bodies.*—Municipal as well as other public [illegible]

or contravention of the powers conferred upon them. BRINDABUN CHUNDER ROY *v.* MUNICIPAL COMMISSIONERS OF SERAMPORE . . 19 W. R., 309

80. ——— Suit to set aside order as to assessment of rates *Beng. Act III of 1864, s. 33—Municipal Commissioners—Appeal against assessment.*—A suit to set aside an order made on an [illegible]

COMMISSIONERS OF CHAPRA
[I. L. R., 1 Calc., 409

81. ——— Question of liability to pay tax—*Suit to recover Municipal tax—Tax levied under erroneous supposition.*—A suit was brought in the Court of the District Munsif of Guntur to re- [illegible]

the matter in contest. *Leman* v. *Damodaraya, I. L. R., 1 Mad., 158,* distinguished. KAMAYYA *v.* LEMAN
[I. L. R., 2 Mad., 37

82. [illegible]

JURISDICTION OF CIVIL COURT —*continued.*

14 MUNICIPAL BODIES—*continued.*

Municipal Commissioners held under the Bengal Municipal Act (Bengal Act III of 1884) *S*, one of the candidates, was declared to have been elected a poll was demanded and *S* was again declared by the presiding officer to have been duly elected. An objection was then taken by the defeated candidates

Procedure (Act XIV of 1882) such a suit would lie in the Civil Court *Held* also that the Magistrate should not have been made a defendant in the suit, and that the plaintiff was not entitled to a

See ABDUR RAHIM *v* MUNICIPAL BOARD OF KOIL [I. L. R., 22 All., 143

83.———Acts done in accordance with

Bengal Municipal Act, decide that certain works are necessary, that conclusion in the absence of *mala fides* or fraud or considerations of that nature cannot be questioned in a Civil Court. The action of the Municipality, so far as a privy was concerned, was held not to be *ultra vires*, although in the notice issued in accordance with s 246 of the Bengal Municipal Act, they directed the plaintiff to remove not only certain huts, but also a pucca privy, inasmuch as the Municipality had a right to require him to remove the privy under s. 224 of the Act. DUKE *v.* RAMESWAR MALIA . . . . I. L. R., 26 Calc., 811 [3 C. W. N., 508

84. ——— Suit to set aside illegal assessment—*Bengal Municipal Act (Bengal Act III of 1884), ss. 85, 93, 113, 116.*—There is nothing in the Bengal Municipal Act to prevent a ratepayer from seeking in a Civil Court a decision that the assessment made by a municipality is *ultra vires*, and not binding upon him. So where the plaintiff was the owner of a granary and a threshing

JURISDICTION OF CIVIL COURT —*continued.*

14. MUNICIPAL BODIES—*concluded.*

separately at 9 annas,—*Held* that this was not a case of enhancement of assessment, but of fresh assessment, and so the suit was maintainable. NAVADIP CHANDRA PAL *v.* PURNANANDA SAHA [3 C. W. N., 73

85.——— Municipal taxation—Assessment—*Bengal Municipal Act (Bengal Act III of 1884 as amended by Bengal Act IV of 1894), ss. 85, cl. (a), 87, 114, 116—Appeal against assessment—Jurisdiction of Civil Court to set aside an assessment—"Circumstances and property within municipality"—Capability and circumstances of the assessee—Specific Relief Act (I of 1877),*

missioners of Chupra, I. L. R., 1 Calc., 409, distinguished. *Navadip Chandra Pal* v. *Purnanand Saha, 3 C. W. N., 73,* referred to KAMESHWAR PERSHAD *v.* CHAIRMAN OF THE BHABUA MUNICIPALITY . . I. L. R., 27 Calc., 849

86. ——— Acquisition of land for

through Government a narrow strip of land at the

[I. L. R., 24 Bom., 600

87. ——— House-tax—*Municipal valua-*

See MUNICIPALITY OF WAI *v.* KRISHNAJI GANGADHAR . . . . I. L. R., 23 Bom., 446

15. OFFICES, RIGHT TO.

88. ——— Suit by hereditary purohit

JURISDICTION OF CIVIL COURT —*continued.*

15. OFFICES, RIGHT TO—*continued.*

89. ——— Suit to obtain declaration of right to perform religious ceremony.— *Quære*—Whether the Courts in India have any

90.——— Right of suit—*Civil Procedure Code, s. 11—Hereditary right to an office—Declaratory decree—Jurisdiction—Emolument*—A suit

91. ——— Suit for an office to which no fixed fees are attached—*Civil Procedure Code, 1882, s. 11—Bom. Reg. II of 1827, s. 21—Its application to suits between Mahomedans—Caste question.*—Under s. 11 of the Code of Civil

of the term as used in the section. HASHIM SAHEB VALAD AHMED SAHEB *v.* HUSEINSHA VALAD KARIMSHA FAKIR . . . I. L. R., 13 Bom., 429

92.——— Suit to establish rights of persons managing pagodas—*Suit for damages*

observances due to his sacred rank, but unconnected with any special office held by him, although the non- caused

93.——— Suit to establish right to honours of office in temple, and damages for

to the Civil Courts to entertain—ARCHAKAM SRINIVASA DIKSHATULU *v.* UDAYAGIRY ANANTHA CHARIU [4 Mad., 349

94. ——— Suit for declaration of right to be priest and collect fees.—In a suit for "Huk Purohitee,"—*Held* that each "jujman" has a right to select his own priest, and no suit to enforce a right to be priest and collect dues as such would lie in the Civil Court. BEHAREE LAL *v.* BABOO . . . . . 2 Agra, 80

95. ——— Suit for a declaration of plaintiff's right to officiate as priest and

96. ——— Right to an office in a temple—*Civil Procedure Code, s. 11*—Plaintiffs sued for an injunction to prevent defendant from interfering with their right to present to certain persons at a certain festival in a certain temple a crown and water. The lower Courts found that plaintiffs possessed the right claimed, and granted the injunction. *Held* that the suit was cognizable by a Civil Court under s. 11 of the Code of Civil Procedure, and that the injunction was properly granted. SRINIVASA *v.* TIRUVENGADA . . I. L. R., 11 Mad., 450

to prove title to the patalki or office of patil,—*Held* that a Civil Court had no right to entertain such a claim in order to influence the controlling revenue officer, who had the power in certain cases to nomi-

JOTI . . . . . 7 Bom., A. C., 72

99. ——— *Act XI of 1843.*

JURISDICTION OF CIVIL COURT
—*continued*

14. MUNICIPAL BODIES—*continued.*

Municipal Commissioners held under the Bengal Municipal Act (Bengal Act III of 1884) *S*, one of the candidates, was declared to have been elected a poll was demanded and *S* was again declared by the presiding officer to have been duly elected. An objection was then taken by the defeated candidates

civil nature, and under s. 11 of the Code of Civil Procedure (Act XIV of 1882) such a suit would lie in the Civil Court. *Held* also that the Magistrate should not have been made a defendant in the suit, and that the plaintiff was not entitled to a

GAFFUR . . I. L. R., 24 Calc., 107

See ABDUR RAHIM *v.* MUNICIPAL BOARD OF KOIL [I. L. R., 22 All., 143

privy under s. 224 of the Act. DUKE *v.* RAMESWAR MALIA . . . . I. L. R., 26 Calc., 811 [3 C. W. N., 508

84. —

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JURISDICTION OF CIVIL COURT
—*continued.*

14. MUNICIPAL BODIES—*concluded.*

separately at 9 annas,—*Held* that this was not a case of enhancement of assessment, but of fresh assessment, and so the suit was maintainable. NAVADIP CHANDRA PAL *v.* PURNANANDA SAHA [3 C. W. N., 73

85. ——— Municipal taxation—Assessment—*Bengal Municipal Act (Bengal Act III of 1884 as amended by Bengal Act IV of 1894), ss. 85, cl. (a), 87, 114, 116—Appeal against assessment—Jurisdiction of Civil Court to set aside an assessment—"Circumstances and property within municipality"—Capability and circumstances of the assessee—Specific Relief Act (I of 1877),*

missioners of Chupra, I. L. R., 1 Calc., 409, distinguished. *Navadip Chandra Pal* v. *Purnanand Saha, 3 C. W. N., 73,* referred to. KAMESHWAR PERSHAD *v.* CHAIRMAN OF THE BHABUA MUNICIPALITY . . I. L. R., 27 Calc., 849

86. ——— Acquisition of land for widening a street—*Bombay District Municipal Act (Bom Act VI of 1873), s. 24—Powers of a Municipality—Civil Court's jurisdiction to interfere.*—Where a District Municipality purchased through Government a narrow strip of land at the

[I. L. R., 24 Bom., 600

87. ——— House-tax—*Municipal valuation—Civil Court's power to raise such valuation.*—A Civil Court has no power to revise the valuation of houses made by a municipality for the purpose of imposing a house tax. MORAR *v* BORSAD TOWN MUNICIPALITY . . I. L. R., 24 Bom., 607

See MUNICIPALITY OF WAI *v.* KRISHNAJI GANGADHAR . . . . I. L. R., 23 Bom., 446

15. OFFICES, RIGHT TO.

88. ——— Suit by hereditary purohit for declaration of right to officiate and for damages for loss of fees—*Cause of action.*—

JURISDICTION OF CIVIL COURT—*continued.*

15. OFFICES, RIGHT TO—*continued.*

fell to the lot of the plaintiff. The plaintiff sued for a declaration of his right to officiate as the purohit of the defendants and for damages for loss of fees caused by the defendants employing another purohit. *Held* that the plaintiff had no cause of action. RAMAKRISTNA *v.* RANGA I. L. R., 7 Mad., 424

89. ——— Suit to obtain declaration of right to perform religious ceremony.—*Quære*—Whether the Courts in India have any jurisdiction to determine a question involving a mere declaration of a right to perform religious ceremonies. NAMBOORY SETTAPATTY *v.* KANOO COLANCO PULLIA [7 W. R., P. C., 7 : 3 Moore's I. A., 359

90. ——— Right of suit—*Civil Procedure Code, s. 11—Hereditary right to an office—Declaratory decree—Jurisdiction—Emolument.*—A suit

[illegible]

91. ——— Suit for an office to which no fixed fees are attached—*Civil Procedure Code, 1882, s. 11—Bom. Reg. II of 1827, s. 21*

[illegible]

92. ——— Suit to establish rights of persons managing pagodas—*Suit for damages for withdrawal of religious observances.*—The Civil Courts will recognize and enforce the rights of persons

[illegible]

cannot sue in respect of the withholding of religious observances due to his sacred rank, but unconnected with any special office held by him, although the non-performance of such observances may have caused him some ascertainable pecuniary loss. SRIMAN SADA GOPA *v.* KRISTNA TATTACHARIYAR [1 Mad., 301

93. ——— Suit to establish right to honours of office in temple, and damages for

[illegible]

to the Civil Courts to entertain—ARCHAKAM SRINIVASA DIKSHATULU *v.* UDAYAGIRY ANANTHA CHARLU [4 Mad., 349

94. ——— Suit for declaration of right to be priest and collect fees.—In a suit for "Huk Purohutee,"—*Held* that each "jujman" has a right to select his own priest, and no suit to enforce a right to be priest and collect dues as such would lie in the Civil Court. BEHAREE LAL *v.* BABOO . . . . . 2 Agra, 80

95. ——— Suit for a declaration of plaintiff's right to officiate as priest and

[illegible]

96. ——— Right to an office in a temple—*Civil Procedure Code, s. 11*—Plaintiffs

[illegible]

under s. 11 of the Code of Civil Procedure, and that the injunction was properly granted. SRINIVASA *v.* TIRUVENGADA . . I. L. R., 11 Mad., 450

97. ——— Suit for declaration [illegible]

[illegible]

that a Civil Court had no right to entertain such a claim in order to influence the controlling revenue officer, who had the power in certain cases to nominate

[illegible]

98. ——— Suit for declaration of right to offices of patil—*Right to share in management of watan.*—Where the plaintiff sued to be declared

[illegible]

JOTI . . . . [illegible] MAHADU *v.* AMRITA DIN 7 Bom., A. C., 72

99. ——— *Act XI of 1843.*—Where a plaintiff sued for a declaration of his eligibility to the office of patil, if elected under the provisions of Act XI of 1843, he having been obliged to sue to establish his eligibility in consequence of the defendants' persistent denial of the plaintiff's claim

JURISDICTION OF CIVIL COURT —*continued.*

14 MUNICIPAL BODIES—*continued.*

the Bengal S, one of the

presu obje befor that were vacancies, and also on the ground that S was

suit, and that the plaintiff was not entitled to a

See Abdur Rahim *v.* Municipal Board of Koil [I. L. R., 22 All., 143

83.———Acts done in accordance with

84. ——— Suit to set aside illegal assessment—*Bengal Municipal Act (Bengal Act III of 1884), ss. 85, 93, 113, 116.*—There is nothing in the Bengal Municipal Act to prevent a ratepayer from seeking in a Civil Court a decision

JURISDICTION OF CIVIL COURT —*continued.*

14. MUNICIPAL BODIES—*concluded.*

separately at 9 annas,—*Held* that this was not a case of enhancement of assessment, but of fresh assessment, and so the suit was maintainable. Navadip Chandra Pal *v.* Purnananda Saha [3 C. W. N., 73

85. ——— Municipal taxation—Assessment—*Bengal Municipal Act (Bengal Act III of 1884 as amended by Bengal Act IV of 1894), ss. 85, cl. (a), 87, 114, 116—Appeal against assessment—Jurisdiction of Civil Court to set aside an assessment—"Circumstances and property within municipality"—Capability and circumstances of the assessee—Specific Relief Act (I of 1877),* (a), ded of ge- mni- cipality is *ultra vires* and illegal, and the Civil Court has jurisdiction to set aside such an assessment. *Manessur Das* v. *Collector and Municipal Commissioners of Chupra, I. L. R., 1 Calc., 409,* distinguished. *Navadip Chandra Pal* v. *Purnanand Saha, 3 C. W. N., 73,* referred to. Kameshwar Pershad *v.* Chairman of the Bhabua Municipality . . I. L. R., 27 Calc., 849

86. ——— Acquisition of land for widening a street—*Bombay District Municipal Act (Bom. Act VI of 1873), s. 24—Powers of a Municipality—Civil Court's jurisdiction to interfere.*—Where a District Municipality purchased through Government a narrow strip of land at the

87. ——— House-tax—*Municipal valua-*

See Municipality of Wai *v.* Krishnaji Gangadhar . . . . I. L. R., 23 Bom., 446

15. OFFICES, RIGHT TO.

88. ——— Suit by hereditary purohit for declaration of right to officiate and for damages for loss of fees—*Cause of action.*—The ancestor of the plaintiff was appointed purohit of the town of P by Government, and obtained, prior to 1810, a mirasi inam as the emolument of the office. By an agreement made between the descendants of the original purohit the families in the town of P were divided between them, and that of the defendants

JURISDICTION OF CIVIL COURT —*continued.*

15. OFFICES, RIGHT TO—*continued.*

fell to the lot of the plaintiff. The plaintiff sued for a declaration of his right to officiate as the purohit of the defendants and for damages for loss of fees caused by the defendants employing another purohit. *Held* that the plaintiff had no cause of action. RAMAKRISTNA *v.* RANGA I. L. R., 7 Mad., 424

89. ——— **Suit to obtain declaration of right to perform religious ceremony.**—*Quære*—Whether the Courts in India have any

90.——— **Right of suit**—*Civil Procedure Code, s. 11—Hereditary right to an office—Declaratory decree—Jurisdiction—Emolument.*—A suit for the establishment of a right to the hereditary title of musicians to a satra will lie under s. 11 of the Code of Civil Procedure, notwithstanding that the right sought to be established is one which brings in no profit to those claiming it. MAMAT RAM BAYAN *v.* BAPU RAM ATAI BURA BHAKAT

[I. L. R., 15 Calc., 159

91. ——— **Suit for an office to which no fixed fees are attached**—*Civil Procedure Code, 1882, s. 11—Bom. Reg. II of 1827, s. 21—Its application to suits between Mahomedans—Caste question.*—Under s. 11 of the Code of Civil

92.——— **Suit to establish rights of**

[illegible] Mad., 561

93. ——— **Suit to establish right to**

to the Civil Courts to entertain—ARCHAKAM SRINIVASA DIKSHATULU *v.* UDAYAGIRY ANANTHA CHARLU

[4 Mad., 349

94. ——— **Suit for declaration of right to be priest and collect fees.**—In a suit for "Huk Purohitee,"—*Held* that each "jujman" has a right to select his own priest, and no suit to enforce a right to be priest and collect dues as such would lie in the Civil Court. BEHAREE LAL *v.* BABOO . . . . . . 2 Agra, 80

95. ——— **Suit for a declaration of plaintiff's right to officiate as priest and**

96. ——— **Right to an office in a temple**—*Civil Procedure Code, s. 11*—Plaintiffs

97. ——— **Suit for declaration of**

98. ——— **Suit for declaration of right to offices of patil**—*Right to share in management of watan.*—Where the plaintiff sued to be declared

[illegible] Bom., A. C., 13

99. ——— *Act XI of 1843.*

JURISDICTION OF CIVIL COURT —*continued*

15. OFFICES, RIGHT TO—*continued.*

to such eligibility, whereby the revenue authorities were induced to refuse to recognize it,—*Held* that the suit was recognizable by a Civil Court *Held* also that such a suit would lie even when the object of it was only to enable the plaintiff to influence the revenue authorities by showing that the Civil Court had declared him eligible for office as patil *Abaji Sankroji* v *Niloji Baloji, 2 Bom., 342,* and *Yesaji Apaji* v. *Yesaji Mhaloji, 8 Bom., A. C., 35,* distinguished. NINGANGAVDA PATIL v. SATYANGAVDA PATIL [11 Bom., 232

100 ——— Suit to establish right to

101 ——— Suit for declaration of right to officiate as sole representative of a branch of watandar family—*Bombay Hereditary Offices Act (III of 1874).*—From the date of the coming into force of the Bombay Hereditary Offices Act (III of 1874), it is not competent to the Civil Court to en-

[I. L. R., 2 Bom., 370

102. ———Suit for declaration of right to officiate as watandar—*Bombay Hereditary Offices Act (III of 1874).*—Since Bombay Act III of 1874 came into force, no suit will lie in a Civil Court for a declaration that a person is eligible to officiate as a hereditary officer falling within the scope of that Act. Since that Act became law, none but representative vatandars or their deputies or substitutes can officiate

103. ——— *Bombay Hereditary Offices Act (III of 1874), s. 18—Suit by village mahars to recover*

v *Lakshmibai, I. L. R., 2 Bom., 375,* followed. *Ramchandra Dabholkar* v. *Anant Sat Shenvi I. L. R., 8 Bom., 25,* distinguished The plaintiffs sued, as vatandar mahars of certain villages, to establish their right to receive the aya attached to their office, as against defendants, who were the vatandar mangs of the same villages, and who claimed the right to receive the aya equally with the plaintiffs. *Held*

JURISDICTION OF CIVIL COURT —*continued.*

15. OFFICES, RIGHT TO—*continued.*

that the suit was not cognizable by a Civil Court. PARSHA v. LAGMYA SHAN . I. L. R., 13 Bom., 83

104 ——— Regular Hereditary

ditary deputy vatandar of a certain deshpandi vatan, vested in the defendants as hereditary vatandar, and as such deputy entitled to receive a certain

Bombay Act III of 1874, s. 56 *Held* that, as

105. ——— *Suit in respect*

Act X of 1867, s. 4—Its application to suits between private persons.—The plaintiff and his cosharers in a kulkarni vatan entered into an agreement in 1869 for the performance of the duties of the vatan by the several sharers in turn. The agreement provided that, if any of the sharers prevented the nomination of a sharer to officiate in his turn, he should pay R100 as damages to the person thus excluded from office. The plaintiff alleged that in 1883 it was his turn to officiate, that the defendants, instead of electing him in accordance with the agreement, nominated another person, who was confirmed in the appointment by the Collector. The plaintiff therefore sued the defendants to recover R100 as damages for breach of the agreement of 1869. *Held* that the agreement could not be enforced by a civil suit, as it was opposed to the policy of

limited to suits against Government. NARO PANDURANG v. MAHADEV PURSHOTAM [I. L. R., 12 Bom., 614

106 ——— *Suit for lands attached to hereditary office—Mad. Reg. VI of 1831, s. 3*—A suit in the Civil Courts for

JURISDICTION OF CIVIL COURT
—continued

15 OFFICES, RIGHT TO—continued.

"manam" lands attached to the hereditary office of village carpenter is barred by the operation of s. 3 of Regulation VI of 1831 PALAMALAI PADAYACHI v. SHANMUGA ASARI I. L. R., 17 Mad., 302

PICHHUVAYYAN v. VILAKKUDAYAN ASARI [I. L. R., 21 Mad., 134

107 ——————— *Suit for partition and declaration of right to a specific share in a kulkarni vatan and to officiate—Hereditary office—Vatandar's Act (Bom. Act III of 1874), s. 67—Collector, Duty and functions of.*—In a suit for partition of a kulkarni vatan for a declaration that the plaintiffs were entitled to officiate as kulkarnis and for their share in the moiety of the vatan belonging to the parties it was contended that under the Vatandars' Act (Bombay Act III of 1874) the suit was not maintainable in the Civil Court. *Held* that the Vatandars Act does not preclude the Civil Court from declaring the plaintiffs' right to the status of vatandars when the share defined is in respect of a share in the vatan belonging to the branch of the parties, and the declaration does not interfere with the rights of the Collector in any way as given by the Act In preparing the register, the Collector's duty, as determined by s. 67 of the Act, is confined to specifying the names of the heads of families and the proprietary part possessed by each head, and is in no way concerned with the rights of the members of a particular branch *inter se*. GOVIND SITARAM v. BAPUJI MAHADEO . . I. L. R., 18 Bom., 516

108 ——————— [illegible]

[illegible]

persons wearing a certain caste mark in a certain tract of country. *Held* that the suit was not cognizable by a Civil Court THOLAPPALA CHARLU v. VENKATA CHARLU . I. L. R., 19 Mad., 62

109. ——————— *Suit in which the right to an office and to its emoluments is in dispute.*—A suit in which the only question for decision was whether or not the plaintiff was the aya of a certain [illegible]

[illegible]

Court. Its decision in no way involves any interference in a caste question. GURSANGAYA v. TAMANA [I. L. R., 16 Bom., 281

110. ——————— *Civil Procedure Code, 1882, s. 11—Suit for right to property and for office or emolument.*—The plaintiffs were some of the bhakats or members of a satra or rel[illegible] nity, and they claimed the right to ent[illegible] ghar or prayer hall, and perform their [illegible] other rites therein. They alleged in the [illegible]

[illegible]

fered with by the defendants in such performance and had been expelled from the kirtanghar The prayer of the plaint was that the plaintiffs' right to enter the kirtanghar to perform the said rites and ceremonies and to receive their share of the offerings might be established; that the kirtanghar from which they had been dispossessed might be made over to them for the purpose of such performance, and that a prohibitory injunction might be granted enjoining the defendants not to obstruct them in such performance. The defendants, who were the satria and the other members of the fraternity forming the majority of the entire body of bhakats, denied the rights claimed by the plaintiffs as bhakats, and stated that the satra was governed by the satria and a select body of bhakats that the plaintiff No 1 had received mantra or spiritual initiation from one Saruram, contrary to [illegible]

[illegible]

kirtanghar, and the defendants contended that the Civil Court had no jurisdiction in the matter, and that the suit was therefore not maintainable. The lower Courts held that the Civil Court could entertain the suit, and they made decrees practically ordering [illegible]

[illegible]

[illegible] 21 Calc., 463

111. ——————— Suit for share in emoluments of vatan—*Bombay Hereditary Offices Act (III of 1874)—Act X of 1876*—[illegible] Act III of 1874 nor Act X of 1876 contains any provision excluding the jurisdiction of Civil Courts [illegible]

JURISDICTION OF CIVIL COURT —continued.

15. OFFICES, RIGHT TO—continued

to such ... to establish a share in the emoluments of ... which has ceased to be a service vatan ... Mo... CHHOTIBIBI . I. L. R., 5 Bom., 578

———— **Suit for damages for** ...

excluded by Act X of 1876 as amended by Act XVI of 1877, s. 1, are limited to claims against Government. VASUDEV VITHAL SAMANT *v.* RAMCHANDRA SAMANT . . I. L. R., 6 Bom., 129

GANPATRAV *v.* RANGRAV [I. L. R., 6 Bom., 133 note

GAVDAPA *v.* SHIBASANGVADA [I. L. R., 6 Bom., 133 note

113. ———— **Suit to rank as vatandar** —*Bombay Hereditary Offices Act (III of 1874).*—Under the Vatandars Act (Bombay Act III of 1874), as under the law antecedent to it, the Civil Court ...

... or likely to arise to the plaintiff by its infraction. When the list of vatandars is either undisputed or settled by the decree of the Civil Court, the Collector derives jurisdiction under the Act to determine which of them shall be their representative. RAMCHANDRA DABHALKAR *v.* ANANT SAT SHENVI [I. L. R., 8 Bom., 25

114. ———— **Suit for a share and entry of name in place of deceased vatandar**—*Bombay Hereditary Offices Act (III of 1874), s. 35—Heir—Adopted son.*—S. 35 of the Bombay Hereditary Offices Act (III of 1874) only contemplates the intervention of a Civil Court for the pur...

BALAJI . . . I. L. R., 9 Bom., 25

115. ———— **Suit to recover lands enfranchised**—*Hereditary Office—Enfranchised inam—Mad. Reg. VI of 1831—Mad. Act IV of 1866.*—Where a claim to an hereditary village ...

... Civil Court cannot take cognizance of a suit by the claimant to recover the lands from the incumbent to

JURISDICTION OF CIVIL COURT —continued.

15. OFFICES, RIGHT TO—concluded.

whom the lands have been granted by the Inam Commissioner. KAMATCHI AMMAL *v.* AGILAND AMMAL [I. L. R., 6 Mad., 334

116. ———— **Suit for a declaration as to land alleged to be nattamai maniyams** —*Mad. Reg. VI of 1831, s. 3—Jurisdiction of Revenue Courts—Res judicata—Civil Procedure Code, 1882, s. 13.*—In a suit to establish plaintiff's title to certain land alleged by the defendants, who were the Secretary of State for India in Council and the nattamaigar of a certain village, to be maniyam land attached to the office of the second defendant, and previously held to be such by a Revenue ...

... of 1831, s. 3, or by the decision of the Revenue Court from granting the declaration prayed for. RAVUTHA KOUNDAN *v.* MUTHU KOUNDAN [I. L. R., 13 Mad., 41

117. ———— **Suit for declaration of** ...

... was elder than that represented by one of the defendants. The object which he desired to obtain by a declaration in that form was to influence the Col...

... pateli vatan. ... diction to ente... sought, if mad... plaintiff's statu... however, equall... custom of the v... by s. 25 of t... (Bombay Act III of 1874) was imposed on the Collector, and not upon the Civil Court. RAOJI *v.* GENU [I. L. R., 22 Bom., 344

118. ———— **Suit to contest** ... **of charitab...** *Act XX of* ... the right of ... granted for the support of a chattram and for feeding Brahmins is cognizable by the Civil Courts. SUBRAMANYA *v.* SECRETARY OF STATE FOR INDIA [I. L. R., 6 Mad., 361

16. PARTNERSHIP.

119. ———— **Suit for accounts and share of profits of ...**

NARAIN *v.* HEERA LALL . . . 1 Agra, 236

JURISDICTION OF CIVIL COURT —*continued*

16. PARTNERSHIP—*concluded*.

120. ——— Suit for dissolution of partnership—*Winding-up—Contract Act (IX of 1872), s 265—Civil Procedure Code, ss 11, 213, 215, sch IV, form No 113* —The ordinary Civil Courts have jurisdiction to try a suit for dissolution of a partnership, their jurisdiction to try such suits not being ousted by s 265 of the Contract Act, 1872. RAMJIWAN MAL *v.* CHAND MAL [I. L. R., 7 All., 227

17. PENALTIES.

121. ——— Imposing penalty without authority—*Interference with rights of parties by way of penalty* —Civil Courts have no power to interfere with the vested rights of parties merely by way of penalty, unless they are authorized to do so by positive legislative enactment. RAM SAHOY SINGH *v* KOLDEEP SINGH . . . . 15 W. R., 80

See RAMNIDHY KOONDOO *v* AJOODHYARAM KHAN . . . . 11 B. L. R., Ap , 37

18 POLITICAL OFFICERS.

122. ——— Act done by political officer —*Interference with private rights.*—An act done by a political officer interfering with the private rights of parties can be questioned in the Civil Courts. MUKOOND NARAIN DEO *v.* JOY COOMAREE DEBIA [1 W. R., 16

123. ——— Suit for damages against Political Agent at Court of Modhool—*24 & 25 Vict., c 104, s 9—Letters Patent, cl. 13.*—In a suit brought in the High Court at Bombay by the Hindu inhabitants of Mahalingpore, a village in the territories of the Chief of Modhool, against the Political Agent at the Court of Modhool, for damages for injury done to them by certain orders made by him in his exe [illegible] was a [illegible] diction [illegible] c. 104, [illegible] diction, or in its extraordinary civil jurisdiction under s. 13 of the Letters Patent. INHABITANTS OF MAHALINGPORE *v.* ANDERSON [7 B. L. R., 452 note

19. POTTAHS.

124. ——— Suit to compel grant of pottah—*Landlord and tenant—Maurasidars, Right of—Relinquishment of tenure—Grant to maurasidars.*—Where the mirasidars of a village have relinquished their pottah for lands in the village, and thereby given occasion to the revenue authorities to offer pottahs to others, a Civil Court cannot [illegible]

JURISDICTION OF CIVIL COURT —*continued.*

19. POTTAHS—*continued.*

125. ——— Suit for declaration of exclusive possession under pottah from Government—*Allegation of wrong insertion of name in pottah.*—The plaintiff sued to have it declared [illegible]

suit was properly brought in the Civil Court. PURNANAL DEKA KOHTA *v.* MAYARAM DEKA KOHTA [10 C. L. R., 201

126. ——— Suit to cancel pottah— [illegible]

127. Suit in Civil Court to enforce exchange of pottah and muchalka—*Madras Rent Recovery Act (VIII of 1865)—Declaratory decree—Civil Procedure Code, s. 53—* [illegible]

originally sought. NARASIMMA *v* SARYNARAYANA [I. L. R., 12 Mad., 481

128. ——— Suit to enforce acceptance of improper pottah—*Madras Rent Recovery Act (Mad Act VIII of 1865), ss. 3, 7, 87—Decree for rent.*—A landlord sued his tenants in the Court of a District Munsif to enforce acceptance of pottahs and the execution of muchalkas by them, and to recover arrears of rent. The suits were filed more than thirty days after tender of the pottahs [illegible]

[illegible] Suit to enforce exchange of [illegible]

JURISDICTION OF CIVIL COURT —*continued.*

19. POTTAHS—*concluded.*

pottah and execution of a muchalka. *Held* further that, if the pottah which has been tendered is found not to be a proper one, such a Court cannot amend it and direct the tenant to execute a muchalka corresponding with it as amended, but can, in a suit properly framed for that purpose, pass a decree declaring what is a proper pottah. RAMAYYAR *v.* VEDACHALLA [I. L. R., 14 Mad., 441

130. ——— Suit for enforcement of pottah and other relief—*Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 10—De-*

which the pottah should contain. SATAPPA PILLAI *v.* RAMAN CHETTI . I. L. R., 17 Mad., 1

131. ——— Pottah granted by Government—*Application to Government for waste land —Irregular publication of application—Effect of non-compliance with darkhast rules on title.*—The

REDDI . I. L. R., 18 Mad., 434

20. PRIVACY, INVASION OF.

132. ——— Suit for injury caused by invasion of privacy.—The doctrine that the injury caused by invasion of one's privacy is a senti-

... BUKSH *v.* RAM SOOKH . . . . 3 Agra, 253

133. ——— Invasion of privacy by opening windows.—The invasion of privacy by opening windows is not treated by the law as a wrong for which any remedy is given. KOMATHI *v.* GURUNADA PILLAI . . 3 Mad., 141

134. ——— *Easement—Suit for injunction—Right of suit.*—The invasion of privacy ...

actior ...

Mad.

JURISDICTION OF CIVIL COURT —*continued.*

20. PRIVACY, INVASION OF—*continued.*

135. ——— Suit to have windows closed —*Invasion of privacy of women.*—The defendants

verandah removed. *Held* that no such suit was maintainable. MAHOMED ABDUR RAHIM *v.* BIRJU SAHU [5 B. L. R., 676: 14 W. R., 103

136. ——— Suit to have windows removed—*Invasion of privacy of women.*—In a suit to compel the defendant to remove certain windows in his house which overlooked the apartments occupied by the females of the plaintiff's household,—*Held* that the plaintiff was not entitled to have them closed. RAMLAL *v.* MAHESH BABOO [5 B. L. R., 677 note

KALEE PERSHAD SHAHA *v.* RAM PERSHAD SHAHA [18 W. R., 14

137. ——— Suit to have doors closed—*Invasion of privacy of women.*—A suit to close doors recently opened in the house of a neighbour on the ground that such doors overlook the zenana or female apartments of the plaintiff, does not lie. GOLAM ALI *v.* MAHOMED ZAHUR ALUM [6 B. L. R., Ap., 76

See GIBBON *v.* ABDUR RAHMAN KHAN [3 B. L. R., A. C., 411

138. ——— Raising house to get extended range of vision—*Invasion of privacy.*—

139. ——— Opening new doors or windows—*Usage of Gujerat—Overlooking neighbour's house.*—*Held* that, in accordance with the

whic

intru

law,

Madi

TRIKAM NARSI . . 5 Bom., A. C., 42

140. ——— *Usage of Gujerat.*—When in Gujerat a householder's privacy is invaded by the opening of new doors and windows in his neighbour's house, his right of action is not altered by the fact that a public road runs between the dominant and the servient tenements *Mani Shankar Hargovan v. Trikam Narsi, 5 Bom., A. C., 42,* followed. KUVARJI PREMCHAND *v.* BAI JAVER [6 Bom., A. C., 143

JURISDICTION OF CIVIL COURT —*continued.*

20. PRIVACY, INVASION OF—*concluded.*

141. ———— **Right to have window opening on to neighbouring house**—*Right of privacy.*—Where the plaintiff opened a new window in his house at Dharwar, which rendered the defendant's house less private than before,—*Held* that the plaintiff was not guilty of any tortious act,

in the towns of Gujerat, evidence of the most satisfactory character is necessary. SRINIVAS UDPIRAV *v.* REID . . . . . . 9 Bom., 266

142. ———— *View of open courtyard.*—Where a window opened by the defendant commanded a view, not of the plaintiff's private apartments, but of an open courtyard outside his house, it was held that there had been no invasion of the plaintiff's privacy which would entitle him to have the window closed, according to the custom legally recognized in Gujerat. KESHAV HARKHA *v.* GANPAT HIRACHAND . . 8 Bom., A. C., 87

21. PROCESSIONS.

See SUJAUDIN *v.* MADHAVDAS [I. L. R., 18 Bom., 693

22. PUBLIC WAYS, OBSTRUCTION OF.

144. ———— **Erection of building in public road**—*Nuisance.*—A person aggrieved by

145. ———— **Suit for closing a new road and opening old one**.—In a suit for closing a

JURISDICTION OF CIVIL COURT —*continued.*

22. PUBLIC WAYS, OBSTRUCTION OF —*continued.*

Civil Court had no jurisdiction to entertain the suit HIRA CHAND BANERJEE *v.* SHAMA CHARAN CHATTERJEE 3 B. L. R., A. C., 351: 12 W. R., 275

CHAND MOSTAFI [3 B. L. R., A. C., 295: 12 W. R., 160

147. ———— No suit lies for obstructing a public road, unless the plaintiff can show that he has suffered particular inconvenience from such obstruction. PARBATI CHARAN MUKHOPADHYA *v.* KALINATH MUKHOPADHYA [4 B. L. R., Ap., 73

148. ———— *Suit by zamin-*

the community. RAJ NARAIN MITTER *v.* EKADASI BAG . . . . I. L. R., 27 Calc., 793

149. ———— **Obstructing public road**—*Suit for declaration of right of way—Special damage.*—A suit for declaration of right of way by a public road will not lie, where there is no allegation of special injury or inconvenience to the plaintiff. RAMTARAK KARATI *v.* DINANATH MANDAL [7 B. L. R., 184

RAJ LUKHEE DEBIA *v.* CHUNDER KANT CHOWDHRY . . . . . . 14 W. R., 173

BHAGEERUTH BISHEE *v.* GOKUL CHUNDER MUNDUL . . . . 18 W. R., 58

BHUGEERUTH DASS KOYBURTO *v.* CHUNDER CHURN KOYBURTO . . . 22 W. R., 463

150. ———— *Criminal Pro-*

151. ———— *Special damage—Abatement of nuisance—Criminal Procedure Code (Act X of 1872), s. 518—Damages, Right to.*—Where special damage is caused to any person by an obstruction placed upon a public

JURISDICTION OF CIVIL COURT —*continued.*

22. PUBLIC WAYS, OBSTRUCTION OF —*continued.*

152. ——————— *Public thoroughfare—Right to sue—Special damage—Leave—Right of lessee—Trespass.*—The plaintiff, a holder

question the legality of the erections at the time of the lease. *Satku* v. *Ibrahim Aga*, I. L. R., 2 Bom., 457, and *Karim Buksh* v. *Budha*, I. L. R., 1 All., 249, referred to. RAMPHAL RAI v. RAGHUNANDAN PRASAD . . . . I. L. R., 10 All., 498

153. ——————— *Obstruction by*

property. *Baroda Prosad Mustafee* v. *Gorachand Mustafee*, 3 B. L. R., A. C., 295: 12 W. R., 160, discussed. *Dovaston* v. *Payne*, 2 Smith's L. C., 1st Ed., 154, *R.* v. *Pratt*, 4 E. & B., 860; *Rolls* v. *Vestry of St. George the Martyr, Southwark*, L. R., 14 Ch. D., 785; and *Goodson* v. *Richardson*, L. R., 9 Ch. D., 221, referred to. TOTA v. SARDUL SING

[I. L. R., 10 All., 553

23. REGISTRATION OF TENURES.

154. ——————— **Suit to compel registration of tenure**—*Suit to compel Collector to register and assess land transferred in accordance with Mad. Reg. XXV of 1802.*—The Civil Courts have jurisdiction to entertain a suit brought by the alienee to compel the Collector to register and sub-assess a portion of a zamindari transferred in accordance with the provisions of Madras Regulation XXV of 1802. PONNUSAMY TEVAR v. COLLECTOR OF MADURA

[3 Mad., 35

155. ——————— **Suit to compel Collector to register**—*Chota Nagpore—Beng. Regs. II of 1793, s. 9, and XIII of 1833.*—A suit will not lie to compel a Collector in Chota Nagpore to register a party as proprietor of an estate. LALLA BISSEN PERSHAD v. COLLECTOR OF HAZARIBAGH

[13 W. R., 397

tor is not exclusive, but concurrent. MADHUB CHUNDER PAL v. HILLS

[1 B. L. R., A. C., 175: 10 W. R., 197

157. ——————— **Right of claimant to have name registered**—*Jurisdiction of Revenue Courts—Question of title—Registration of names—Declaratory decree, Suit for.*

... the persons whom they ought to register.

JURISDICTION OF CIVIL COURT —*continued*

23. REGISTRATION OF TENURES—*concluded*.

158. ——————— *Land in Assam —Suit for declaration of title to—Jurisdiction of Civil Court.*—A person claiming a right to rent-bearing land in Assam, held under a pottah from Government in the names of the persons against

v. BOBIA KEOT [I. L. R., 7 Calc., 437: 9 C. L. R., 218

KALINDRI DABIA v KOMOLOKANTO SURMA [I. L. R, 7 Calc., 439 note

HOOIABOO RAYAH v. LOOM RAYAH [I. L. R., 7 Calc., 440 note: 7 C. L. R., 221

159. ——— **Power to reverse order for registration of name**—*Land Registration Act (Beng Act VII of 1876), ss. 52, 55—Declaratory decree—Possession, Confirmation of.*—The Civil

to declare the title of an individual or to give him a

160. ——— **Right of purchaser to have lands registered in his name in revenue records**—*Vendor and purchaser—Suit for declaration of such right—Bombay Land Revenue Act (Bom. Act V of 1879), ss. 71 and 196—Demand for registration and refusal of Collector as preliminary to right of suit*—Plaintiffs, having purchased certain lands in 1867, brought this suit

register,—*Held* that this circumstance was not necessary to give jurisdiction, although it might be a reason for treating the suit as premature BHIKAJI BAJI v. PANDU . . I. L. R., 19 Bom., 43

24. RELIGION.

161. ——— **Mahomedan religious customs**—*Civil Procedure Code, s 11—Right of suit—Suit for injunction to restrain reading of the kutbah.*—Certain Moplahs, described as "the Moktessor and Jamats" of a mosque, sued certain other Mahomedans, described as "members of the Puslar caste," alleging that the custom was for the

JURISDICTION OF CIVIL COURT —*continued*.

24. RELIGION—*concluded*.

defendants to attend the plaintiffs' mosque on Friday at the reading of the kutbah, and that the defendants had recently built another mosque a short distance off, and had "for two months been attempting to read the kutbah there." It was further alleged in the plaint that such reading of the kutbah was "quite contrary to the Mahomedan religion," and

an injunction, restraining the defendants from reading the kutbah in their mosque. *Held* that the plaint disclosed no cause of action. MAINE MOILAR v. ISLAM AMANATH . I. L. R., 15 Mad., 355

25. RENT AND REVENUE SUITS.

(*a*) BOMBAY.

162. ——— **Suits for immediate possession**—*Jurisdiction of Revenue Court.*—*Held that the Civil and the Revenue Courts have concurrent* jurisdiction to hear and decide suits in regard to immediate possession. EX-PARTE NAGOVA KAM JAKAN GAUDA . . . 3 Bom., A. C., 108

163. ——— **Suit to rectify assessment of land revenue**—*Bom Reg. XVII of 1827*—

See also GULAM MOHIDIN v. COLLECTOR OF AHMEDABAD . . . 12 Bom., Ap., 276

VYAKUNTA BAPUJI v. GOVERNMENT OF BOMBAY [12 Bom., Ap., 1

And GOVERNMENT OF BOMBAY v. HARIBHAI MONBHAI . . . . 12 Bom, Ap., 225

164. ——— **Suit to recover possession of inam lands**—*Bom. Act III of 1863, s. 3.*—

recover possession of inam lands. SHIDMAL GURA v. ANDERSON . . . 11 Bom., 39

165. ——— **Removal or destruction of**

arises where boundaries ... the case falls under s. 3 of Bombay Act XI of 1866; but where the question between the parties is whether there has been an

JURISDICTION OF CIVIL COURT —*continued.*

25 RENT AND REVENUE SUITS—*continued.*

encroachment by the defendant on the lands of the plaintiff, the Civil Courts have jurisdiction. BAPUJI BALVANT *v.* RAGHUNATH VITHAL

[6 Bom., A. C., 72

166. ———— Suit for amount improperly levied as rent—*Broach Talukhdars' Relief Act (XV of 1871), s. 23—Personal liability of manager of thakur.*—The Broach Talukhdars' Relief Act (XV of 1871) does not bar the cognizance by the Civil Courts of a suit to recover the amount improperly levied as rent of rent-free land and to obtain a declaration that such land is not subject to the payment of rent, albeit that, under s. 23 of the Act, the manager of a thakur's estate is exempt from personal liability for anything done by him *boná fide* pursuant to the Act, and is not subject to an action for damages on account of the attachment of the plaintiff's property. ASMAL SALEMAN *v.* COLLECTOR OF BROACH . . . I. L. R., 5 Bom., 135

terest on mesne profits awarded by Government resolution—Construction.—In 1859 the plaintiff's

apply The words "competent officer" as used in prov. (*k*) included the Governor in Council, who is one of the authorities upon whom judicial powers were conferred by Act XI of 1852. JANARDANRAV *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 13 Bom., 442

168. ———— Suit for redemption of mortgage—*Bombay Revenue Jurisdiction Act (X of 1876), s. 4, cl. (c)—Sale of mortgaged land by Native Chief for arrears of assessment—Claim by purchaser against mortgagor and mortgagee.*—The plaintiff sued to redeem certain land mortgaged by him to the first defendant. The second defendant

had bought it. The Court of first instance rejected the plaintiff's claim on the ground that the suit could not be entertained by a Civil Court under the provi-

confirming the order of the District Court, that Government having rendered no assistance in the proceedings for the realization of the revenue by the Native Chief on which the defendant relied, the jurisdiction of the Civil Court was not taken away by s. 4 (*c*) of the Revenue Jurisdiction Act. MAHADU *v.* LAKSHMAN . . . I. L. R., 17 Bom., 681

169. ———— Suit by an inamdar against a khot to recover balance of land revenue—*Revenue Jurisdiction Act (X of 1876), s. 4, sub-cl. (b)—Bombay Land Revenue Code (Bom. Act V of 1879), s. 216, cls. (a), (b), and (c)—Collector's certificate—Pensions Act (XXIII of 1871), s. 4—Survey by British Government—Change in rate of assessment of revenue.*—In a suit by an inamdar of a village against a khot to recover rent in kind (according to the market rate at the time of payment), the defendant (khot) contended (1) that he was only liable to pay cash assessment as

venue Jurisdiction Act (X of 1876), s. 4, sub-cl. (*b*), and the Land Revenue Code (Bombay Act V of

further, that the payment which the khot had been making to the inamdar before the time of the British survey was in the nature of assessment or rating by

JURISDICTION OF CIVIL COURT —*continued.*

25. RENT AND REVENUE SUITS—*continued.*

Government, but *held* also that the plaintiffs were entitled to the old assessment as claimed by them. It was plain that in cases falling within sub-cls. (*a*) and (*e*) of s. 216 of the Land Revenue Code (Bombay Act V of 1879, the inamdar's interest in the assessment would not be affected by the application of Chs. VIII to X of that Act He would still get the old assessment in the alienated lands in the village in the former case, and the same amount of assessment in the latter, and the same must have been the intention in cases contemplated by subcl (*b*). The "holder of the village" in the concluding paragraph of s. 216 must be read as meaning the "holder of the assessment or any part thereof of an alienated village." GANGADHAR HARI KARKARE *v* MORBHAT PUROHIT . I. L. R., 18 Bom., 525

170. ———— **Default in paying assessment of revenue**—*Bombay Revenue Jurisdiction Act (X of 1876), ss. 4 (c) and 5 (b)—Payment of assessment by another—Order of Collector transferring lands into name of person paying assessment—Suit by defaulter to recover the land*—An order made by a Collector removing A's lands from his khata, and transferring them to B's khata, on the ground that A had allowed the assessment thereof to fall into arrears, and that B had paid the assessment, does not by itself amount to forfeiture of A's interest in the lands A suit by A to recover such land from B being simply a suit between private parties for the purpose of establishing a private right, s. 4 (c) of Act X of 1876 does not bar the jurisdiction of the Civil Court. BHAU *v* HARI

[I. L. R., 20 Bom., 747

171. ———— **Forest Officer**—*Bombay Re-* [illegible]

timber sold by the latter under s 81 of Act VII of 1878, a Forest officer not being a Revenue officer under Act X of 1876 HARIBHAI GANDABHAI *v* SECRETARY OF STATE FOR INDIA

[I. L. R., 20 Bom., 764

172. ———— **Free pasturage** — *Bombay Revenue Jurisdiction Act (X of 1876), s. 4, cl (f), and s. 5—Bombay Survey and Settlement Act (Bom. Act I of 1865), s 32—Land Revenue Code (Bom. Act V of 1879), ss 38 and 39—Land set apart by Government for grazing—Subsequent sale by Government of part of such land—Right of pasturage by the inhabitants of a village over Government waste lands—Right of Government over such land.*—The land comprised in three survey numbers situate in the village of Mahim were set apart by Government as free grazing land for the cattle of villagers Out of this land about 2,600 acres was sold by Government to one M (defendant No 2) in 1891 The extent of the area over which village cattle grazed before the sale being thus curtailed, the plaintiff for himself and on behalf of the other villagers brought this suit against the Secretary of [illegible] grazing for the [illegible] (in the [illegible] apart so much of the land as might be necessary for free grazing, etc., and that, until such land as was necessary had been set apart, the plaintiff might be declared to have the right of using the land comprised in the three survey numbers as heretofore, and that an injunction might be granted accordingly. Government alleged that the land that was left after the sale to M was sufficient for the *bonâ fide* needs of the villagers, and contended (*inter alia*) that the suit was barred under s. 4, cl (*f*), of the Revenue Jurisdiction Act (X of 1876). *Held*, con- [illegible]

Courts are precluded from entertaining it under s. 4 of the Revenue Jurisdiction Act A question relating to the discontinuous occupation of the village wastes by the village cattle is as much a question of land revenue as one relating to the permanent occupation of them or a portion of them by an individual. TRIMBAK GOPAL RAHALKAR *v* SECRETARY OF STATE FOR INDIA . . . I. L. R., 21 Bom., 684

(*b*) MADRAS.

173 [illegible]

Commissioner may be annulled, without destroying its effect as an enfranchisement of the inam. In a suit by the adopted son of the late possessor of [illegible]

NARAYANA SASTRULU . . 2 Mad., 327

174. ———— **Effect of certificate of Inam Commissioner.**—*Evidence of title*—The [illegible]

175 ———— **Order for execution in suit tried by Village Munsif**—*Corruption or partiality of Munsif—Mad. Reg. IV of 1816.*—The

JURISDICTION OF CIVIL COURT —*continued.*

25 RENT AND REVENUE SUITS—*continued.*

encroachment by the defendant on the lands of the plaintiff, the Civil Courts have jurisdiction. BAPUJI BALVANT *v.* RAGHUNATH VITHAL [6 Bom., A. C., 72

166. ———— Suit for amount improperly levied as rent—*Broach Talukhdars' Relief Act (XV of 1871), s. 23—Personal liability of manager of thakur.*—The Broach Talukhdars' Relief Act (XV of 1871) does not bar the cognizance by the Civil Courts of a suit to recover the amount improperly levied as rent of rent-free land and to obtain

damages on account of the attachment of the plaintiff's property. ASMAL SALEMAN *v.* COLLECTOR OF BROACH . . . I. L. R., 5 Bom., 135

167. ———— Inam Commissioner, In-

terest on mesne profits awarded by Government resolution—Construction—In 1859 the plaintiff's

prov. (*k*) included the Governor in Council, who is one of the authorities upon whom judicial powers were conferred by Act XI of 1852. JANARDANRAV *v.* SECRETARY OF STATE FOR INDIA [I. L. R., 13 Bom., 442

168. ———— Suit for redemption of mortgage—*Bombay Revenue Jurisdiction Act (X of 1876), s. 4, cl. (c)—Sale of mortgaged land by Native Chief for arrears of assessment—Claim by purchaser against mortgagor and mortgagee.*—The plaintiff sued to redeem certain land mortgaged by him to the first defendant. The second defendant

had bought it. The Court of first instance rejected

confirming the order of the District Court, that Government having rendered no assistance in the proceedings for the realization of the revenue by the Native Chief on which the defendant relied, the jurisdiction of the Civil Court was not taken away by s 4 (*c*) of the Revenue Jurisdiction Act. MAHADU *v.* LAKSHMAN . . . I. L. R., 17 Bom., 681

169. ———— Suit by an inamdar against a khot to recover balance of land revenue—*Revenue Jurisdiction Act (X of 1876), s. 4, sub-cl. (b)—Bombay Land Revenue Code (Bom. Act V of 1879), s. 216, cls. (a), (b), and (c)—Collector's certificate—Pensions Act (XXIII of 1871), s. 4—Survey by British Government—*

1879), s 216, sub-cl (*b*). *Held* that, as there was no objection by either party to the amount or incidence

further, that the payment which the khot had been making to the inamdar before the time of the British survey was in the nature of assessment or rating by

JURISDICTION OF CIVIL COURT —continued.

25. RENT AND REVENUE SUITS—*continued.*

Government, but *held* also that the plaintiffs were entitled to the old assessment as claimed by them. It was plain that in cases falling within sub-cls. (*a*) and (*e*) of s. 216 of the Land Revenue Code (Bombay Act V of 1879), the inamdar's interest in the assessment would not be affected by the application of Chs. VIII to X of that Act. He would still get the old assessment in the alienated lands in the village in the former case, and the same amount of assessment in the latter, and the same must have been the intention in cases contemplated by sub-cl. (*b*). The "holder of the village" in the concluding paragraph of s. 216 must be read as meaning the "holder of the assessment or any part thereof of an alienated village." GANGADHAR HARI KARKARE *v.* MORBHAT PUROHIT I. L. R., 18 Bom., 525

170 ———— **Default in paying assessment of revenue**—*Bombay Revenue Jurisdiction Act (X of 1876), ss. 4 (c) and 5 (b)—Payment of assessment by another—Order of Collector transferring lands into name of person paying assessment—Suit by defaulter to recover the land.*—An order made by a Collector removing *A*'s lands from his khata, and transferring them to *B*'s khata, on the ground that *A* had allowed the assessment thereof to fall into arrears, and that *B* had paid the assessment, does not by itself amount to forfeiture of *A*'s interest in the lands. A suit by *A* to recover such land from *B* being simply a suit between private parties for the purpose of establishing a private right, s. 4 (*c*) of Act X of 1876 does not bar the jurisdiction of the Civil Court. BHAU *v.* HARI [I. L. R., 20 Bom., 747

171. ———— **Forest Officer**—*Bombay Revenue Jurisdiction Act (X of 1876), ss. 3 and 11—*

the request of a Forest officer, the price of cut timber sold by the latter under s. 81 of Act VII of 1878, a Forest officer not being a Revenue officer under Act X of 1876. HARIBHAI GANDABHAI *v.* SECRETARY OF STATE FOR INDIA [I. L. R., 20 Bom., 764

172. ———— **Free pasturage** — *Bombay Revenue Jurisdiction Act (X of 1876), s. 4, cl. (f), and s. 5—Bombay Survey and Settlement Act (Bom. Act I of 1865), s. 32—Land Revenue Code (Bom. Act V of 1879), ss. 38 and 39—Land set apart by Government for grazing—Subsequent sale by Government of part of such land—Right of pasturage by the inhabitants of a village over Government waste lands—Right of Government over such land.*—The land comprised in three survey numbers situate in the village of Mahim were set apart by Government as free grazing land for the

plaintiff for himself and on behalf of the other villagers brought this suit against the Secretary of ... grazing ... for the ... ; (in the ... apart so much of the land as might be necessary for free grazing, etc., and that, until such land as was necessary had been set apart, the plaintiff might be declared to have the right of using the land comprised in the three survey numbers as heretofore, and that an injunction might be granted accordingly. Government alleged that the land that was left after the sale to *H* was sufficient for the *bonâ fide* needs of the villagers, and contended (*inter alia*) that the suit was barred under s. 4, cl. (*f*), of the Revenue Jurisdiction Act (X of 1876). *Held*, confirming the decree of the lower Court dismissing the suit, that while the Courts, consistently with the

Courts are precluded from entertaining it under s. 4

TRIMBAK GOPAL RAHALKAR *v.* SECRETARY OF STATE FOR INDIA . . I. L. R., 21 Bom., 684

(*b*) MADRAS.

173 ———— **Enfranchisement by Inam Commissioner.**—Civil Courts have jurisdiction to enquire into the title of lands enfranchised by the Inam Commissioner, and the sanad granted by the Commissioner may be annulled, without destroying its effect as an enfranchisement of the inam. In a suit by the adopted son of the late possessor of

174. ———— **Effect of certificate of Inam Commissioner.**—*Evidence of title.*—The

175. ———— **Order for execution in suit tried by Village Munsif**—*Corruption or partiality of Munsif—Mad. Reg. IV of 1816.*—The

JURISDICTION OF CIVIL COURT —*continued.*

25. RENT AND REVENUE SUITS—*continued.*

Civil Court has no jurisdiction under s. 29 of Regulation IV of 1816 to make an order for the execution of a decree in a suit tried before a Village Munsif The section only applies where a Village Munsif has been guilty of corruption or partiality in the decision of a cause tried by him. NARAYANASAMY NAIKAR *v.* VELU PILLAY 4 Mad., 188

176. ——— **Suit for produce of land**

land and to deprive the plaintiff of the possession and enjoyment thereof. *Bassappah v Kooroovatappa, Mad. S D., 1858, p. 268,* distinguished. BASAPPAH *v* YENKATAPPA 4 Mad., 70

177. ——— **Appeal from order of Collector**—*Mad. Act VIII of 1865, ss. 41, 43.* Certain landholders applied to the Collector for warrants to be put into possession of lands under s. 41 of Madras Act VIII of 1865. The warrants were issued, but certain raiyats appealed under s. 43 by presenting ordinary petitions. In disposing of these

(c) NORTH-WESTERN PROVINCES.

178. ——— **Suits for possession of land**—*Land in Jhansi—Act XVIII of 1867.*—Since Act XVIII of 1867 came into force, suits for possession of land are cognizable in the Civil, and not in the Revenue Courts of the Jhansi Division. HEERA LAL *v.* RUDHOUL . 2 N. W., 85

179. ——— **Suit for recovery of proceeds of sale in execution of decree for rent**—*Decree of Revenue Court.*—Where plaintiff held a decree of a Munsif's Court against certain persons who were cultivators, and issued an attachment against their property, and their zamindar subsequently obtained an order for the execution of a

zamindar for the recovery of such proceeds was cognizable in the Civil Courts. GOKOOL DASS *v.* GUNGESHUR SINGH . . 3 N. W., 164

See GOORAM *v.* KARTICK CHUNDER SINGH [B. L. R., Sup. Vol., 1002 9 W. R., 514

180. ——— **Suit for specific performance of condition of lease**—A suit to obtain specific performance of the conditions of a lease, and not to cancel the lease or eject the tenant from his holding, is cognizable by a Civil Court, and not by the Revenue Court. ABDOOL GHUNNEE *v.* GOODREE RAI . . . . 2 Agra, Pt. II, 192

181. ——— **Suit for declaration of title as holder of revenue-paying estate and for ejectment.**—A suit for a declaration that the defendant holds an estate paying revenue to Government as a manager subject to ejectment at will, and not under a perpetual lease at a fixed rate of rent, and for the defendant's ejectment, is one cognizable by the Civil Courts MAHAMMAD ABU JAFAR *v.* WALI MAHAMMAD . . . I. L. R., 3 All., 81

182. ——— **Suit for mesne profits.**—The jurisdiction in the case of a claim to mesne profits is in the Civil, and not the Revenue Court. SHUNKUR LALL *v.* RAM LALL [1 N. W., 177 : Ed. 1873, 256

183. ——— **Suit to eject ex-proprietary tenant as trespasser and recover mesne profits.**—A suit to eject from land as a trespasser a person who has entered upon such land asserting his claim to the status of an ex-proprietary tenant, and to recover from him mesne profits, is a suit cognizable by the Civil Court. BAKHAT RAM *v.* WAZIR ALI [I. L. R., 1 All., 448

184. ——— **Suit to have land restored to original condition after illegal planting of trees by tenant.**—Where the suit was not for ... claimed to ... ondition by ... y the culti... able by the Civil Court and not by the Revenue Court. JHONA SINGH *v.* NEAZ BEGUM . 2 Agra, Pt. II, 183

185. ——— **Suit for the removal of trees**

186. ——— **Suit by landholder for removal of trees planted by tenant**—*Jurisdiction—Civil and Revenue Court—Act XII of 1881, s. 93 (b), (c), (cc).*—*Held* that a suit by a landholder against his tenant for the removal of certain trees planted by the latter on land let to him for cultivating purposes by the former did not fall within s. 93 of the N.-W. P. Rent Act (XII of 1881), and was cognizable by the Civil Courts. *Deodat Tewari v. Gopi Misr, Weekly Notes, All., 1882, p. 102,* questioned. PROSONNO MAI DEBI *v.* MANSA [I. L. R., 9 All., 35

JURISDICTION OF CIVIL COURT —*continued.*

25. RENT AND REVENUE SUITS—*continued.*

187. ———— **Suit for removal of trees from tenant's holding**—*N.-W. P. Rent Act (XII of 1881), s. 93* —*Held* that a suit by zamindars for the removal of trees planted by a tenant on his

188. ———— **Suit by assignee of interest for share of land.**—In a solehnamah between *B*, the assignor of the plaintiff, and the defendant and a third party, it was agreed that, as *B* held less sir land than the other two persons, there should be an equal division between the shareholders within a certain time, and in case no division took place, that *B* should be entitled to damages. The plaintiff sued to recover possession of certain sir land and a certain sum as damages for the breach of the contract. *Held* that, if the suit was regarded as one brought by a proprietor, who had purchased a certain share, the suit was not cognizable in the Civil Courts JURBUNDHUN SINGH *v.* SHEORAJ SINGH

[5 N. W., 184

189. ———— **Suit for possession of land under kabuliat**—*Landholder and tenant—Relinquishment by occupancy-tenant of his holding—Effect of relinquishment on co-sharers—Act XVIII of 1873 (N.-W. P. Rent Act), ss. 8, 9, 95—Specific performance of contract.*—*K*, the occupancy-tenant of certain land, to whom the landholder had granted a lease thereof for a certain term, gave the latter a kabuliat containing the following clause "On the expiration of the term, the landholder shall have the power to keep the said land under my cultivation at the former rent, or at an enhanced rent as may be agreed upon between the parties, or he may make over the land to some other cultivator at an enhanced

could not be regarded as one for ejectment of a tenant in the manner provided by the Rent Act, but was one

NARAN . . . I. L. R., 5 All., 103

190. ———— **Suit for declaration that land is plaintiff's sir and defendant a lessee** —*Landholder and tenant.*—A zamindar claimed a declaration that certain land was his sir, and that the defendants were in possession thereof as his lessees. The defendants resisted the claim on the ground that they were tenants of the land at fixed rates, and not lessees of it as the plaintiff's sir. *Held* that the suit

191. ——— **Suit for declaration that tenants are shikmis and not occupancy-tenants, and that their holdings are plaintiffs' sir land**—*Act XIX of 1873 (N.-W. P. Land Revenue Act), s. 241—N.-W. P. Rent Act (XII of 1881), ss. 10, 95 (a)* —The effect of s 95 (a) and s 10 of the N.-W P Rent Act (XII of 1881) is to deprive the Civil Courts of jurisdiction to take cognizance of any suit the object of which is to declare, as between the zamindar and tenants, the status of the tenants A Civil Court has no jurisdiction to entertain a suit in which, the defendants being admittedly the tenants of the plaintiffs, the plaintiffs pray for a declaration that certain entries of the defendants in the revenue records as occupancy-tenants, and certain orders of the Revenue Courts maintaining those entries, be set aside, and that the defendants are shikmis and not occupancy-tenants,

importance as incidental to the previous ones, and as a roundabout mode of obtaining a declaration that the defendants are not the plaintiffs' occupancy-tenants. *Per* STRAIGHT, *J.*—The suit might also be considered as one to set aside orders passed by the settlement

192. ———— **Suit involving the deter-**

tenancy of one or other of the parties to it. *Mahesh Rai* v. *Chandar Rai, I. L. R., 13 All., 17,* referred to. SAKINA BIBI *v.* SWARATH RAI

[I. L. R., 15 All., 115

193. ——— **Suit by zamindar to eject as trespassers, persons who claimed to be mortgagees of an occupancy-tenant, such tenant having died without heirs before suit**—*N.-W. P. Rent Act (XII of 1881), s. 9*—

JURISDICTION OF CIVIL COURT —*continued.*

25. RENT AND REVENUE SUITS—*continued.*

MAHABIR KANDU *v.* SHEO PRASAD RAI [I. L. R., 16 All., 325

194. ——— **Suit for possession against trespassers**—*N.-W. P. Rent Act, 1873, XVIII, s. 9—Sale of occupancy-rights with zamindar's consent—Acceptance of rent by zamindar from*

DURGA *v.* JHINGURI I. L. R., 7 All., 511

Upheld on appeal under the Letters Patent in JHINGURI TEWARI *v.* DURGA [I. L. R., 7 All., 878

Reversing the decision of OLDFIELD, J.

195. ——— *N.-W. P. Rent*

decided that *K* held the land under a right of occupancy, and not under such lease. *S* thereupon sued

196. ——— **Suit for demolition of a well**—*Landlord and tenant—N.-W. P. Rent Act*

tenants of all classes to construct wells for the

JURISDICTION OF CIVIL COURT —*continued.*

25. RENT AND REVENUE SUITS—*continued.*

improvement of the land held by them, and therefore where a well constructed by a tenant benefits the land held by him, a suit by the landholder in the Civil Court for its demolition as having been made without his consent is not maintainable. RAJ BAHADUR *v.* BIRMHA SINGH I. L. R., 3 All., 85

197. ——— **Suit by assignee of rent against tenant**—*N.-W. P. Rent Act (XII of*

[I. L. R., 7 All., 258

198. ——— **Assignment of rent of land in satisfaction of interest**—*"Jamog"—Mutation of names in favour of assignee not effected—Suit on bond.*—Subsequently to the execution and registration of a bond, a jamog was made orally between the creditor and the debtor, by which the former agreed to take the rents of certain tenants of the latter in satisfaction of interest, the latter agreed to release the tenants from payment of rent to himself, and the

199. ——— **Suit for share of revenue paid**—*Jurisdiction of Revenue Court—N.-W. P. Rent Act (XVIII of 1873), s. 93 (g).*—On the death of *K*, a dispute arose among her heirs as to the succession to the share of a village of which she was the recorded proprietor. In January 1874, *N* who was not one of her heirs, and who was not a shareholder

respect of such share during the period between January 1874 and February 1878, instituting such suit in a Civil Court (Munsif). *Held* that the suit was not one cognizable in a Revenue Court under s. 93 (*g*) of Act XVIII of 1873, but one cognizable in a Civil Court. NATH PRASAD *v.* BAIJNATH [I. L. R., 3 All., 66

JURISDICTION OF CIVIL COURT —*continued.*

25. RENT AND REVENUE SUITS—*continued.*

200. ——— Suit for declaration of proprietary right, and right to demand rent— *N.-W. P. Rent Act (XVIII of 1873), ss 93, 95.* —The plaintiffs in this suit claimed a declaration of their proprietary right in respect of certain lands and possession of the lands, alleging that the defendants were their tenants, and liable to pay rent for the lands. The defendants, while admitting the proprietary right of the plaintiffs, alleged that they paid the revenue assessed on the lands, that they paid no rent, and that the plaintiffs were not entitled to rent, and they styled themselves tenants at fixed rates. *Held* on appeal that, as the defendants substantially denied the proprietary title of the plaintiffs and set up a title of their own, the claim of the plaintiffs for a declaration of their proprietary right and of their right to demand rent was a matter which the Civil Court must decide, leaving the plaintiffs to sue in the Revenue Court to eject the defendants, and to recover rent, if the position of the defendants as tenants was established. KANAHIA *v.* RAM KISHEN

[I. L. R., 2 All., 429

201. ——— Suit by co-sharers in a joint undivided mehal for declaration of title to share of rent— *Civil and Revenue Courts—Act XII of 1881 (N. W. P. Rent Act), ss. 93 (h), 106, 148—Act I of 1877 (Specific Relief Act), s. 42—Civil Procedure Code, s. 11.*—The effect and intention of the proviso to s. 148 of the N.-W. P. Rent Act (XII of 1881) is to preserve the jurisdiction of the Civil Courts under s. 42 of the Specific Relief Act (I of 1877), while prescribing a special period of one year's limitation for such suits when they arise out of adjudications such as s. 148 contemplates Neither that section nor the proviso affects the jurisdiction of a Civil Court to entertain a suit by some of a body of [illegible]

[illegible] ... of money as the plaintiffs' [illegible]

does not contemplate suits in which such claims of title are so made and resisted But a suit by some of the co-sharers in a joint and undivided mehal for such declaration and such recovery of a proportionate share of rent as above referred to is barred by the provisions of s 106 of the N.-W. P Rent Act, in the absence of proof of local custom or special contract authorizing such suits MAHADEO SINGH *v.* BACHU SINGH I. L. R., 11 All., 224

[illegible]

JURISDICTION OF CIVIL COURT —*continued.*

25. RENT AND REVENUE SUITS—*continued.*

of a decree against the tenants of certain zamindars, the plaintiff attached and sold certain trees upon the holding of the judgment-debtors, and the auction-purchaser in turn transferred them to the plaintiff, [illegible]

[illegible]

distrained some of the trees of which the plaintiff was in possession under his purchase, sold them, and themselves bought them The plaintiff then brought a suit against the zamindars, praying for a declaration [illegible]

[illegible]

(his landlords), agreeing that on the expiry of the term fixed in the kabuliat he should have no claim to [illegible]

[illegible]

204. ——— Application to a Civil Court for stay of execution of a decree of a Court of revenue— *Civil Procedure Code (1882), ss 2 and 492—"Decree," Meaning of.*—The term "decree" as used in the Code of Civil Procedure does not include the decree of a Court of Revenue. [illegible]

[illegible]

[I. L. R., 16 All., 498

JURISDICTION OF CIVIL COURT —*continued.*

25 RENT AND REVENUE SUITS—*continued.*

defendants in the village papers as the ...

Court. AJUDHIA RAI *v.* PARMESHAR RAI [I. L. R., 18 All., 340

title through the landholder. Where the dispossession has been by a trespasser, the suit is one for a Civil Court. MAULA *v.* BAHALA [I. L. R., 19 All., 84

207. ———— Suit to recover moveable property sold on account of an arrear of revenue due by a person other than the ...

208 ———— Jurisdiction of Civil Courts where no remedy obtainable in Courts of ...

defendants, together with the zamindar of the land in dispute. *Held* that, inasmuch as the plaintiff could, under the circumstances indicated in his plaint, have ...

JURISDICTION OF CIVIL COURT —*continued.*

25 RENT AND REVENUE SUITS—*continued.*

tenancy. *Tarapat Ojha* v. *Ram Ratan, I. L. R., 15 All.,* 387, and *Ajudhia Rai* v. *Parmeshar Rai, I. L. R., 18 All., 340,* distinguished. DUKHNA KUNWAR *v.* UNKAR PANDE I. L. R., 19 All., 452

209. ———— Suit in ejectment against ...

trespasser, it is competent to a Civil Court to grant a decree for possession on the ground that the plaintiff is a tenant, the class of his tenancy being left to the Revenue Courts to determine. *Ajudhia Rai* v. *Parmeshar Rai, I. L. R., 18 All., 340,* and *Dukhna Kunwar* v. *Unkar Pande, I. L. R., 19 All., 452,* referred to. KALIANI *v.* DASSU PANDE [I. L. R., 20 All., 520

210. ———— Suit to set aside, on the ...

Mahesh Rai v. *Chandar Rai, I. L. R., 13 All., 17; Ajudhia Rai* v. *Parmeshar Rai, I. L. R., 18 All., 340;* and *Husain Shah* v. *Gopal Rai, I. L. R., 2 All., 428,* referred to. DAULAT RAM *v.* ANWAR HUSEN . . . I. L. R., 20 All., 241

211. ———— Effect on tenant's rights of his neglecting to apply under s. 95—*N.-W. P. Rent Act (XII of 1881), s. 95, cl. (n).*—A tenant of certain muafi land was dispossessed by his ...

into their own cultivation. The zamindars thereupon sued in the Civil Court for the ejectment of the former tenant as a trespasser. *Held* that the defendant could not set up ...

v. DEOKI RAI . . I. L. R., 20 All., 471

Held on appeal under the Letters Patent that the failure of a tenant to apply under s. 95 (n) of the N.-W. P. Rent Act, 1881, for the recovery of the occupancy of land, of which he has been wrongfully dispossessed, within the period of six months after the date of dispossession prescribed for such applications by s. 96 (e) has the effect not

JURISDICTION OF CIVIL COURT —*continued.*

25. RENT AND REVENUE SUITS—*continued.*

only of barring the tenant's remedy, but of extinguishing the tenant's right to the occupancy of the land. DALIP RAI *v.* DEOKI RAI

[I. L. R., 21 All., 204

212. ———— Suit to eject a tenant on the ground that the tenant had denied the landholder's title—*N.-W. P. Rent Act (XII of 1881), s 34 et seqq, 95 (d), and 206 et seqq—Landholder and tenant.*—The reason which a landholder may have for desiring to eject a tenant of agricultural land has nothing to do with the procedure to be adopted for the tenant's ejectment Where the procedure laid down in s. 36 *et seqq* of the N.-W. P. Rent Act, 1881, is available, the landholder must adopt that procedure, and the mere fact that the landholder's alleged cause of action is the denial ... vil

[I. L. R., ... All., 43

213. ———— Remedy of mortgagee for non-payment of rent—*Mortgage—Lease of mortgaged premises by mortgagee to mortgagor—Jurisdiction of Revenue Court.*—Certain mortgagees, in whose favour a deed of mortgage providing for possession in lieu of interest had been executed, on the day following the execution of the mortgage granted a lease of the mortgaged premises to the mortgagor. The two documents were registered on the same day. The amount of rent reserved by the lease was exactly equivalent to the amount of interest payable under ...

Prasad, I. L. R., ... All., ... ALI KHAN *v.* LALTA PRASAD

[I. L. R., 19 All., 496

214. ———— Suit for possession and mesne profits alleging tenancy and dispossession—*Act XVIII of 1873, s 95.*—The plain- ...

215. ———— Suit by tenant against sub-tenant for ejectment—*"Landholder" and "tenant"—Act XII of 1881 (N.-W. P. Rent Act), Ch. II (B), ss 93, 95, 148*—The plaintiffs, alleging that they were the occupancy-tenants of certain land, that they had sub-let its cultivation to the defendants, and that the defendant had denied their title and set up a claim to be the tenant-in-chief under the zamindar, sued in the Civil Court to establish the right they claimed to the land and for possession of the land. *Held* that the cognizance of the suit in the Civil Court was not barred by s 93 or 95 of the N.-W. P. Rent Act. RIBBAN *v.* PARTAB SINGH

[I. L. R., 6 All., 81

216. ———— Suit to eject mortgagee of occupancy tenant—*N.-W. P. Rent Act (XII of 1881), ss. 93, 94—Limitation.* ... the zamin- ... y-holding ... not fall ... Rent Act, ... e rules of ... MADHO

[I. L. R., 12 All., 419

217. ———— Suit for ejectment against occupancy-tenant and his mortgagee—*N.-W. P. Rent Act (XII of 1881), s. 94—Limitation.*—The ... tenant for ... Rent Act ... mortgagee ... tained a foreclosure decree against the occupancy-tenant, got himself made a party defendant under s. 112A of the Act The pleadings, however, were ...

... cerned, was a trespasser) was of a civil nature and triable by the Civil Court and therefore subject to the ordinary rules of limitation as laid down in the Limitation Act and not to the special limitation prescribed by s 94 of Act XII of 1881 SRI KISHEN *v.* ISHRI

I. L. R., 14 All., 223

218. ———— Suit for possession alleging (tenancy) and dispossession—*N.-W. P. Rent Act (XVIII of 1873), s. 95*—The plaintiff sued the defendants (who were not his landlords) to recover possession of certain land on the averment that he held the same with a right of occupancy and had been forcibly dispossessed by them and also to recover mesne profits The defendants denied the alleged ejectment, and alleged that they were in possession of the land under a lease from the ...

219. ———— Suit for possession after being dispossessed unlawfully—*N.-W. P. Rent Act (XVIII of 1873), s. 95.*—It was held

JURISDICTION OF CIVIL COURT—*continued.*

25. RENT AND REVENUE SUITS—*continued.*

that the Civil Courts were precluded by the provisions of s. 95 of Act XVIII of 1873 from taking cognizance of a claim to obtain possession of a tenant-holding based on the averment that the zamindar, the real defendant, had sanctioned a mortgage of the holding to the plaintiff, and appropriated the mortgage-money in satisfaction of arrears of rent due by the tenant, the mortgagor and *pro formâ* defendant, and that, having placed the plaintiff into possession, he had subsequently wrongfully dispossessed him. MUAZZIM ALI KHAN *v.* SHEO PARSHAD [7 N. W., 259

220. ——— **Suit to recover sir land**

in dispute, with or without right, as trespassers or as tenants. GHISA *v.* DIDARI . 7 N. W., 257

221. ——— **Suit for ejectment of person wrongfully in possession as tenant**—*N.-W P Rent Act (XVIII of 1873), s 95.*—It was held (in accordance with the opinion of TURNER, SPANKIE, and OLDFIELD, JJ, STUART, C.J., and PEARSON, J, dissenting) that the Civil Courts were not precluded by the provisions of s 95 of Act XVIII of 1873 from disposing, after the passing of the Act, of a suit which was instituted in the Court of first instance before the passing thereof, in which the main matter in dispute was whether the plaintiff was entitled to eject the defendants

222. ——— **Suit for perpetual injunction to restrain ejectment of tenant**—*Act XII of 1881—N.-W. P Rent Act, s 95—Act I of 1877 (Specific Relief Act), s 56 (b) and (f).*—A tenant, on whom a notice of ejectment had been served under the N.-W. P. Rent Act, 1881, and whose suit to contest his liability to ejectment,

diction of the Civil Court being excluded by s 95 of the Rent Act and by s 56 (b) and (f) of the Specific Relief Act. MAHIP SINGH *v.* CHOTU [I. L. R., 5 All., 429

223. ——— **Suit by landlord to determine nature of tenant's tenure**—*N.-W. P.*

JURISDICTION OF CIVIL COURT—*continued.*

25. RENT AND REVENUE SUITS—*continued.*

Rent Act (XII of 1881), s. 95 (a).—The cognizance by the Civil Courts of a suit by a landholder for a declaration that a tenant is not a tenant at fixed rates, or an occupancy-tenant, but a tenant-at-will, is barred by the provisions of s. 95 (a) of the N.-W. P. Rent Act, 1881. MAHARAJA OF BENARES *v.* ANGAN . . . I. L. R., 7 All., 112

224. ——— **Suit for declaration of proprietary right to land**—*Suit for a declaration that tenant is a tenant-at-will and liable to have his rent enhanced at will—Act XII of 1881 (N.-W. P. Rent Act), s. 95 (a) and (l).*—A suit

225. ——— **Suit to recover under**

sion of certain land by virtue of a grant thereof

STUART, C.J., PEARSON, J., and SPANKIE, J., that the suit was cognizable by the Civil Courts. JAGAN NATH PANDAY *v.* PRAG SINGH [I. L. R., 2 All., 545

226. ——— **Suit for damages for use and occupation of land**—*N.-W. P. Rent Act (XII of 1881), s. 95 (l)—Landholder and tenant—Sir land—Determination of rent of ex-proprietary tenant.*

XII of 1881, sued the latter in the Civil Court

227. ——— *Suit against an*

JURISDICTION OF CIVIL COURT —*continued.*

25. RENT AND REVENUE SUITS—*continued.*

tenant in a Civil Court for damages for the use and occupation of the land. *Ram Prasad v. Dina Kuar, I. L. R., 4 All., 515; Radha Prasad Singh v. Jugal Das, I. L. R., 9 All., 185*, and *Debi Singh v. Jhanna Kuar, I. L. R., 16 All., 209*, referred to *Brijlawan Singh v. Mehti Ali, Weekly Notes, All., 1887, p. 140*, and *Ranjit Singh v. Diwan Singh, Weekly Notes, All., 1889, p. 175*, overruled. DEBI SINGH v. MUHAMMAD ISMAIL KHAN

[I. L. R., 20 All., 296

228. ———— *Landholder and tenant—Ex-proprietary tenant—Rent Act XII o*[illegible]

[illegible]

for the use and occupation of sir land of which *D*, on losing such rights, had become by law the ex-proprietary tenant. *Held* that, *T* being *D*'s landlord, such suit was not maintainable in the Civil Courts. *Ram Prasad Rai v. Dina Kuar, I. L. R., 4 All., 515, S. A. No. 768 of 1881*, and *S. A. No. 914 of 1879*, followed. *Held* also that the provisions of s. 206 of the N.-W. P. Rent Act were not applicable, it [illegible]

229. ———— **Suit for money wrongly collected as rent**—*Lease of zamindari rights—Wrongful dispossession—Lessor and lessee—Suit for compensation—N.-W. P. Rent Act (XVIII of 1873), s. 95, cl. (m).*—*A* granted *B* a lease of his zamindari rights in certain villages for a term of years at a fixed annual rent. Two years before the term expired, in breach of the conditions of the lease, he dispossessed *B*, and thereafter made collections of rent from the agricultural tenants himself. *B* sued him in the Civil Court to recover the money so collected by him in those two years. *Held (by a majority of the Full Bench) that the* Courts of Revenue were open to *B*, and that, as he could obtain in such a Court the relief he sought in the suit by an application for compensation for wrongful dispossession, the Civil Courts could not, under cl. (*m*), s. 95 of Act XVIII of 1873, take cognizance of the suit. *Per* STUART, *C.J.*, and SPANKIE, *J.*—That as the matter was not one on [illegible]

[I. L. R., 1 All., 338

230. ———— **Suit to recover alleged excess payments in respect of irrigation** [illegible]

the plaintiff BALWANT SINGH v. SECRETARY OF STATE FOR INDIA . . I. L. R., 22 All., 139

231. ———— **Suit for possession of land and for mesne profits**—*N.-W. P. Rent Act (XVIII of 1873), s. 95, cls. (m) and (n)—Revenue Court, Jurisdiction of.*—*T*, the occupancy tenant of certain lands, gave *K* a lease of his occupancy rights for a term of twenty years. In the execution of a decree for the ejectment of *T* from [illegible]

[illegible]

[I. L. R., 2 All., 137

232. ———— **Suit for compensation for wrongful dispossession**—*N.-W. P. Rent Act, 1873, s. 95, cls. (m) and (n)—Wrongful dispossession of land.*—In an estate held by *S* as a sub-[illegible]

[illegible] occupancy. This decree having been set aside, *S* recovered the possession of the [illegible]

[illegible]

[I. L. R., 2 All., 707

233. ———— *N.-W. P. Rent Act (XII of 1881), ss. 36 and 95, cls. (m) and (n)* [illegible]

[illegible]

Rent Act, but afterwards reinstated by order of a [illegible]

[illegible] *I. L. R., 2 All., 707*, and *Dhandu Bhagat v. Lal Pande, 1 Leg. Rem. R. and R., 183*, referred to THAKUR DIN v. MANNU LAL

[I. L. R., 19 All., 456

JURISDICTION OF CIVIL COURT —*continued.*

25. RENT AND REVENUE SUITS—*continued.*

234. — — **Suit for declaration of right to re-formed land**—*Landlord and tenant—Submergence of occupancy-tenant's land—Dilution—Liability for rent—Resumption by landholder—Custom—N.-W. P Rent Act (XII of 1881), s 95, cl. (n).*—A landholder, alleging that by local custom when land was submerged, and the tenant ceased to pay rent for the same, his right to it abated, and when the land re-appeared the landholder was entitled to possession thereof, that certain land belonging to him had been submerged, and the occupancy-tenant thereof had ceased to pay rent for it; and that such land had re-appeared and had come into his possession under such custom, sued such tenant in the Civil Court for a declaration of his

235. ———— **Suit for recovery of land of which tenant has been dispossessed.**—*Relation of landlord and tenant admitted—Act XII of 1881, s. 95, cl. (n)*—A landholder served a notice of ejectment on *G*, under the provisions of s. 36 of the Rent Act (N.-W P.), as a tenant-at-will Under the provisions of s. 39 of the Act, *G* contested his liability to be ejected on the ground that he was not a tenant-at-will, but one holding by virtue of an agreement executed in his favour by the landholder The question of *G*'s liability to be ejected was decided adversely to him, and he was

landholder's defence to this suit was that *G* had been rightfully ejected *Held* that, inasmuch as the relation of landlord and tenant between the parties at the time of the proceedings under the Rent Act was admitted, and the dispute in the suit could appropriately form the subject of an application under cl (*n*) of s. 95 of that Act, the suit was not cognizable in the Civil Courts. *Muhammad Abu Jafar* v. *Wali Muhammad, I. L R., 3 All., 81, Sukhdaik Misr* v *Karim Chaudhri, I. L. R., 3 All, 521; Kanahia* v. *Ram Kishen, I. L. R., 2 All., 429,* distinguished. *Shimbhu Narain Singh* v. *Bachcha, I. L. R, 2 All., 200,* referred to. GANGA RAM *v.* BENI RAM **I. L. R., 7 All., 148**

236. ———— *N.-W. P. Rent Act, ss. 93, 95, cls. (m), (n)—Landholder and tenant—Jurisdiction of Revenue Court.*—No suit will lie against a landlord in a Civil Court for the wrongful dispossession of a tenant from a holding to which Act XII of 1881 applies Where a plaint in a Civil Court alleges facts which, if true, would show that the dispute or matter involved in the suit was one to which s. 93 or s 95 of Act XII of 1881 would apply, the plaint should be rejected under cl. (*c*) of s. 54 of the Code of Civil Procedure, or possibly in some cases returned under s 57 of the same Code

The plaintiffs, alleging themselves to be occupancy-tenants and to have been wrongfully dispossessed by their landlords, who had made a lease of the land in suit, sued the landlords and the lessees of such land-lords for recovery of possession and for damages. *Held* that s

Court, but ws

revenue *S*

I. L R., 2

RAM RATAN

237. —— **Suit for declaration of right as tenant**—*Landholder and tenant—Declaratory decree—Act XII of 1881, s. 95, cl. (n).*—A suit in which the plaintiff claims, as the tenant of land, that he may be declared to be the tenant, and that the defendant, the landholder, may be restrained from interfering with his right to the land as a tenant, and in which the defendant denies the relation between him and the plaintiff of landholder and tenant, is not a suit which is exclusively cognizable in the Revenue Court. SHEODISHT NARAIN SINGH *v* RAMESHAR DIAL **I. L. R., 7 All., 188**

238. ———— **Suit for rent where the right to receive it is disputed**—*N.-W. P. Rent Act (XII of 1881), s. 148—Landholder and tenant—Third person*—In a suit for rent between a landholder and a tenant under the N.-W. P. Rent Act, 1881, where the right to receive rent is disputed, any rights which the landholder may have against the third person, who has been made a party to the suit, under s. 148 of the Act, can only be enforced through the medium of the Civil Court by a suit for declaration of title and for recovery of any rents improperly collected by such person *Held*, therefore, where in such a suit it was found that the third person had actually and in good faith received the rent sued for, the claim should not have been decreed against him, but should have been dismissed. MADHO PRASAD *v.* AMBAR **I. L. R, 5 All., 503**

239. ———— *N.-W. P. Rent Act, 1881, s. 148 — Landholder and tenant—Third person who has received rent made party—Jurisdiction of Rent Court to pass decree for rent against such party—Question of title.*—In a suit by a landholder for recovery of rent in which a third person alleged to have received such rent is made a party under s. 148 of the N.-W. P Rent Act (XII of 1881), the question of title to receive the rent cannot be determined between the plaintiff and such person, but can only be

receipt and enjoyment of the rent. A party who is brought in under s. 148 of the Rent Act cannot be made subject to the decree for rent so as to allow execution to be taken out against him, whether his *bonâ fide* receipt and enjoyment of the rent is proved or not. The only person against whom such a decree

JURISDICTION OF CIVIL COURT—*continued.*

25. RENT AND REVENUE SUITS—*continued.*

can be passed is the tenant *Madho Prasad v. Ambar, I. L. R., 5 All.*, 502, referred to. *Per* EDGE, *C.J.*, *semble*, that the intention of the Legislature in allowing a third person who claims under s. 148 of the Rent Act to be made a party to the suit may possibly have been that, by bringing him in, he may be found by a declaration in the suit that he had in fact received the rent, so as to prevent him in the civil suit from denying the fact that he had received it. In a suit by a landholder for recovery of rent, the defendants pleaded that they had paid the rent to a co-sharer of the plaintiff. The co-sharer made a deposition in which he alleged that he was entitled to the rent not only as a co-sharer, but also as appointed agent of the plaintiff The Court thereupon made him a party to the suit under s. 148 of the Rent Act, and passed a joint decree against him and the tenant for rent. *Held* that the Court was justified in making him a party under s. 148 of the Rent Act, but was not competent to pass a decree for rent against him. GOBIND RAM v. NARAIN DAS

[I. L. R., 9 All., 394

240. ——— Occupancy-tenant—*Suit by landholder against successor of occupancy-tenant for arrears of rent which accrued during the lifetime of his predecessors—Act XII of 1881 (N.-W. P. Rent Act), ss. 9, 93, cl. (a), 112A, 161.*—A suit against an occupancy-tenant in possession who has accepted the occupancy-holding, for arrears of rent not barred by limitation which accrued in the lifetime of the person from whom the right of occupancy has devolved upon him, is not cognizable by the Civil Court, but is exclusively

v. *Chundee Deen Dooley, 6 N.-W.*, 118; *Mati Deen v. Chundee Deen, 2 N.-W.*, 54, *Wazir Muhammad*

SINGH . . . . I. L. R., 14 All., 331

241. ——— Suit for contribution among pattidars for Government revenue. —*Revenue Court—N.-W. P. Land Revenue Act (XIX of 1873).*—The question in the case was whether the plaintiff, a pattidar who had paid a sum on account of a demand for Government revenue, should sue to recover from the defendants, his co-pattidars, the balance in excess of his own quota in the Civil or in the Revenue Court. *Held* (SPANKIE, *J.*, dissenting) that the Civil Courts were competent to entertain suits of the nature *Per* SPANKIE, *J.*, *contra*. RAM DIAL v. GOLAB SINGH

[I. L. R., 1 All., 26

242. ——— Suits for determination of rights—*Record-of-rights. Entries in—N.-W. P. Land Revenue Act (XIX of 1873), ss. 62, 91, 94 241—Jurisdiction of Revenue Courts.* —The Civil Courts are not competent to try suits to alter or amend a record-of-rights, or to give directions in respect of the same, but they are not debarred from entertaining and determining questions of right, merely because such questions have been the subject of entries in the record-of-rights,

therewith certain village expenses, though such right had been the subject of an entry in the record-of-rights adverse to the person claiming such right, was held to be maintainable. SUNDAR v. KHUMAN SINGH

[I. L. R., 1 All., 614

243. ——— Suit for declaration of right to zamindari cesses—*N.-W. P Land Revenue Act (XIX of 1873), s 66—Beng Reg. VII of 1822, s 9, cl. (i)*—Notwithstanding that zamindari cesses cannot be collected until recognized and sanctioned by the settlement authorities, there is nothing in Regulation VII of 1822, or Act

244. ——— Suit to enforce cess—*N.-W. P Land Revenue Act (XIX of 1873), s. 66*—A cess leviable in accordance with village custom which is not recorded under the general or special sanction of the Local Government cannot, under s 66 of Act XIX of 1873, be enforced in a Civil Court. LALA v. HIRA SINGH . I. L. R., 2 All., 49

245 ——— Suit to dispute partition by Revenue Court *Question of proprietary right decided by Revenue Court under Act XIX of 1873 (N.-W. P. Land Revenue Act), s. 113—Omission by Revenue Court to frame decree—Decision of Revenue Court not open to attack by suit in Civil Court.*—A Revenue Court acting under the provisions of ss. 112 and 113 of the N.-W. P. Land Revenue Act (XIX of 1873) recorded a proceeding declaring the nature and extent of the respective rights of the parties

I. L. R., All., 584

See RANJIT SINGH v. ILAHI BAKSH

[I. L. R., 5 All., 520

JURISDICTION OF CIVIL COURT —*continued.*

25. RENT AND REVENUE SUITS—*continued.*

246. ———— **Question of title arising**

[illegible]

247. ———— **Suit after partition on reference to arbitration**—*Co-sharers in sir land—Determination of rights*—An agreement to

sharer to whom it might be assigned The arbitrator assigned certain sir land belonging to the defendants in this suit to the plaintiffs The partition was concluded according to the terms of the award. The defendants refused to surrender such land to the plaintiffs. The plaintiffs distrained the produce of such land, alleging that it was held by certain persons as their tenants and arrears of rent were due. The defendants thereupon sued the plaintiffs and such persons in the Revenue Court.

defendants in the Civil Court for possession of such

of the parties under the partition, and such suit was cognizable in the Civil Courts. ABHAI PANDEY *v.* BHAGWAN PANDEY . I. L. R., 3 All., 818

248. ———— **Suit for possession of land assigned on condition of service**—*Resumption and assessment of rent—N.-W. P. Land Revenue Act (XIX of 1873), ss 79 and 241.*—The plaintiffs sued for possession of certain land in a village alleging that it had been assigned to

claim was not one to resume such a grant or to assess rent on the land of which a Revenue Court could take cognizance under ss 30 and 95, cl. (*c*), of Act XVIII of 1873, or ss 79 and 241, cl (*h*), of Act XIX of 1873, but one which was cognizable by the Civil Courts. PURAN MAL *v.* PADMA

[I. L. R, 2 All., 732

249. ———— *Resumption of rent-free grant—Act XII of 1881, ss. 30, 95, cl. (c)—Act XIX of 1873, s. 241, cl. (h).*—A zamindar brought a suit to recover possession of certain land in the village which was held by the defendants rent-free, in consideration of rendering services as khera-

the ground that for many years they had been in possession of the land as muafi-holders. *Held* that the dispute so raised was a matter which could form the subject of an application to resume a rent-free grant within the meaning of s. 30 of the N.-W. P. Rent Act (XII of 1881), and that the cognizance of the suit by the Civil Court was therefore barred by cl. (*c*) of s. 95 of that Act, and that for similar reasons the Civil Court under cl. (*h*) of s 241 of the N.-W P. Land Revenue Act (XIX of 1873) could not exercise jurisdiction over the matter of the suit. TIKA RAM *v.* KHUDA YAR KHAN . I. L. R, 3 All., 191

250. ———— **Suit for possession of rent-free and revenue-free tenures**—*Assessment and settlement of revenue-free land—Act XIX of 1873 (N.-W. P. Land Revenue Act), s 241.*—Certain land was settled with the defendants in this suit The Settlement Officer having declared that

prietors This having been done by the settlement officer, the plaintiffs sued the defendants to be maintained in possession of such land free of revenue, and for the cancelment of the Settlement officer's order *Held* that, under s 241 of Act XIX of 1873, the suit was not cognizable in the Civil Courts ZALIM SINGH *v.* UJAGAR SINGH . I. L. R., 3 All., 367

251. ———— **Suit to set aside Collector's**

settlement, the muafi-holding of *A* in the village was resumed, and assessed to revenue; but *A* refused to engage for it, and it was therefore merged for revenue purposes in the mehal of the village, though still held by *A*. In 1872, *A* obtained in the Civil Court a decree by which he was declared to be the proprietor of his holding, and to be entitled

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arate mehal
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entire mehal which the muafi-holding should bear Subsequently the zamindars of the village applied to

JURISDICTION OF CIVIL COURT —continued.

25. RENT AND REVENUE SUITS—continued.

the Collector that *A* might be made to contribute towards the payment of the malikana allowance of the talukhdar. The Collector passed an order declaring *A* to be liable to such contribution, and *A* then instituted a suit for cancelment of the Collector's order for a declaration of his non-liability to contribute to the malikana allowance of the talukhdar, and for a refund of contribution already paid. *Held* that inasmuch as the decree of the Civil Court in 1872 and the proceedings of the Collector consequent thereon constituted the muafi-holding a "mehal" in the terms of s. 3, Act XIX of 1873, and by the terms of ss. 53-55 of the same Act a malikana allowance, such as that under reference, is "revenue," and s 241 cl. (*b*), bars the jurisdiction of the Civil Courts in matters regarding the amount of revenue to be assessed on any mehal, the suit was not cognizable by a Civil Court GAYADAI *v.* KUTUB-UN-NISSA . I. L. R., 6 All., 578

252. ———— Suit for declaration of non-liability of land to assessment of revenue—*Jurisdiction of Civil Court—Declaratory decree—Act XIX of 1873, s 241*—The Civil Courts are not debarred by s 241 of Act XIX of 1873 (N.-W. P. Land Revenue Act) from taking cognizance of a suit for a declaration that land which the revenue officers seek, under the provisions of that Act, to assess to revenue, is included in an area which has already been permanently settled, and is therefore not liable to further assessment. *Government* v *Raj Kishen Singh, 9 W. R., 427*, *Collector of Futtehpore* v. *Munglee Pershad, N.-W. P. S. D A., 1854, p 167*, *Raghunath Suhaee* v. *Bishen Singh, N.-W P. S. D. A., 1855, p. 302*, *Zoolfikur Ali* v. *Ghunsam Baree, N.-W. P S. D. A., 1865, p. 92*, and *Uppu Lakshmi Bhavamma Garu* v. *Purvis, 2 Mad., 167*, referred to SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* RAM UGRAH SINGH . I. L. R., 7 All., 140

253. ———— Suit to recover land [illegible]

[illegible]

in the village, and in 1877 applied for partition of the share of which he had been recorded proprietor, and the same was partitioned, an area of 476 bighas and 5 biswas being allotted to him. Subsequently he brought a suit against the proprietors of the other [illegible]

JURISDICTION OF CIVIL COURT —continued.

25. RENT AND REVENUE SUITS—continued.

[illegible]

254. ———— Suit to question legality of settlement by Collector—*Annulment of settlement—Fresh settlement Act XIX of 1873, s. 241.* A settlement of land belonging to *G* and [illegible]

took the land under his own management Subsequently, under ss 155 and 43 of the Act, the land was settled with *G*'s wife In a suit to enforce against the lands a mortgage executed by *G* to the plaintiff —*Held* that [illegible] s. 241, cl [illegible] into the quest[illegible] made by the [illegible] that she must therefore be taken to represent such rights and interests as the mortgagor possessed, and that consequently the estate was liable in her hands for the mortgage, and the mortgagee was entitled to claim foreclosure against her BABI BABU *v.* GULAB CHAND . . . I. L. R., 7 All., 454

255. ———— Suit to resume a rent-free grant—*Services—N.-W P Rent Act (XII of 1881), ss 3 (2), 30, 95, cl (c)—N.-W P Land Revenue Act (XIX of 1873) ss 3 (4), 79-89, 241, cl (h)—Beng. Regs VIII of 1793, s 41 and XIX of 1793,* [illegible]

perform certain services as a mimic, and that these services were discontinued by the defendant's vendor The plaintiff endeavoured to resume the land in the Revenue Court as a rent-free grant under s 30 of the N.-W. P Rent Act (XII of 1881), but the application was rejected In answer to the suit, the defendant pleaded that it was not cognizable by the Civil Court [illegible]

claim was one for the resumption of such grant [illegible]

grant as is contemplated by s. 30 of the Rent Act,

JURISDICTION OF CIVIL COURT —*continued.*

25. RENT AND REVENUE SUITS—*continued.*

246. ——— **Question of title arising on an application for partition, how to be determined.**—*N.-W. P. Land Revenue Act (XIX*

. . . I. L. R., 10 All., 508

247. ——— **Suit after partition on reference to arbitration**—*Co-sharers in sir land—Determination of rights.*—An agreement to refer to arbitration the partition of a mehal provided that, if sir land belonging to one co-sharer were assigned to another co-sharer, the co-sharer to whom the same belonged should surrender it to the co-sharer to whom it might be assigned The arbitrator assigned certain sir land belonging to the defendants in this suit to the plaintiffs The partition was concluded according to the terms of the award The defendants refused to surrender such land to the plaintiffs The plaintiffs distrained the produce of such land, alleging that it was held by certain persons as their tenants and arrears of rent were due. The defendants thereupon sued the plaintiffs and such persons in the Revenue Court, claiming such produce as their own. The Revenue Court held that such distress was illegal, as such land was in the possession and cultivation of the defendants as occupancy tenants under s. 125 of Act XIX of 1873 The plaintiffs subsequently sued the defendants in the Civil Court for possession of such land, basing such suit on the partition proceedings *Held* that the decision of the Revenue Court did not debar the Civil Courts from determining the rights of the parties under the partition, and such suit was cognizable in the Civil Courts ABHAI PANDEY *v.* BHAGWAN PANDEY . I. L. R., 3 All., 818

248. ——— **Suit for possession of land assigned on condition of service**—*Resumption and assessment of rent—N.-W. P. Land Revenue Act (XIX of 1873), ss. 79 and 241.*—The plaintiffs sued for possession of certain land in a

. . . *Held* that the plaintiffs' claim was not one to resume such a grant or to assess rent on the land of which a Revenue Court could take

of Act XVI

of Act XIX

by the Civil

[I. L. R., 2 All., 732

249. ——— *Resumption of rent-free grant—Act XII of 1881, ss. 30, 95, Act XIX of 1873, s. 241, cl. (h).*—A zamindar brought a suit to recover possession of certain land in a village which was held by the defendants rent-free in consideration of rendering services as khera-patis on the ground that he was entitled as zamindar to dispense with their services, and that therefore they no longer possessed any right to hold the land. The claim was resisted by the khera-patis on the ground that for many years they had been in possession of the land as muafi-holders. *Held* that the dispute so raised was a matter which could form the subject of an application to resume a rent-free grant within the meaning of s. 30 of the N.-W. P. Rent Act (XII of 1881), and that the cognizance of the suit by the Civil Court was therefore barred by cl. (*e*) of s. 95 of that Act, and that for similar reasons the Civil Court under cl. (*h*) of s 241 of the N.-W. P. Land Revenue Act (XIX of 1873) could not exercise jurisdiction over the matter of the suit. TIKA RAM *v.* KHUDA YAR KHAN . I. L. R., 3 All., 191

250. ——— **Suit for possession of rent-free and revenue-free tenures**—*Assessment and settlement of revenue-free land—Act XIX of 1873 (N.-W. P. Land Revenue Act), s. 241*

right to such land under the provisions of s. 82 of Act XIX of 1873 and were entitled to hold it rent-free, the defendants applied to the Settlement officer to assess such land and to settle it with the plaintiffs as the persons in actual possession as proprietors This having been done by the settlement officer, the plaintiffs sued the defendants to be main-

251. ——— **Suit to set aside Collector's order for contribution**—*Malikana—Government revenue—N.-W. P. Land Revenue Act (Act XIX of 1873), s. 241, cl. (b)* —At the settlement of a certain village, a malikana allowance of 10 per cent on the revenue was reserved for *C*, the talukhdar to whom the village belonged At the same settlement, the muafi-holding of *A* in the village was resumed, and assessed to revenue, but *A* refused to engage for it, and it was therefore merged for revenue purposes in the mehal of the village, though still held by *A* In 1872, *A* obtained in the Civil Court a

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by causing a khewat to be prepared, and fixing the proportion of the revenue assessed upon the entire mehal which the muafi-holding should bear Subsequently the zamindars of the village applied to

JURISDICTION OF CIVIL COURT —*continued.*

25. RENT AND REVENUE SUITS—*continued.*

the Collector that *A* might be made to contribute towards the payment of the malikana allowance of the talukhdar. The Collector passed an order declaring *A* to be liable to such contribution, and *A* then instituted a suit for cancelment of the Collector's order for a declaration of his non-liability to contribute to the malikana allowance of the talukhdar and for a refund of contribution already paid. *Held* that inasmuch as the decree of the Civil Court in 1872 and the proceedings of the Collector consequent thereon constituted the muafi-holding a "mehal" in the terms of s. 3, Act XIX of 1873, and by the terms of ss 53-55 of the same Act a malikana allowance, such as that under reference, is "revenue," and s 241 cl (*b*), bars the jurisdiction of the Civil Courts in matters regarding the amount of revenue to be assessed on any mehal, the suit was not cognizable by a Civil Court GAYADAI *v.* KUTUB-UN-NISSA . . I. L. R., 6 All., 578

252. ——— Suit for declaration of non-liability of land to assessment of revenue—*Jurisdiction of Civil Court—Declaratory decree—Act XIX of 1873, s. 241* —The Civil Courts are not debarred by s 241 of Act XIX of 1873 (N.-W. P. Land Revenue Act) from taking cognizance of a suit for a declaration that land which the revenue officers seek, under the provisions of that Act, to assess to revenue, is included in an area which has already been permanently settled, and is therefore not liable to further assessment. *Government* v. *Raj Kishen Singh, 9 W. R., 427*, *Collector of Futteh ore* v. *Munglee Pershad, N.-W. P. S. D A, 1854, p 167*, *Raghunath* ... *1855*, ... *W. P* ... *Bhay*- ... red to SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* RAM UGRAH SINGH . I. L. R., 7 All., 140

253. ——— Suit to recover land ...

476 bighas and 5 biswas. *Held* that the suit would not lie in the Civil Court, being barred by the provisions of s. 241, cl (*f*), of the N.-W. P. Land Revenue Act (XIX of 1873). HABIBULLAH *v.* KUNJI MAL [I. L. R., 7 All., 447

254. ——— Suit to question legality of settlement by Collector—*Annulment of settlement—Fresh settlement Act XIX of 1873, s. 241.* A settlement of land belonging to *G* and which he had mortgaged having been annulled under s. 158 of the N.-W P. Land Revenue Act (XIX of 1873), the land was framed by the Collector of the district under s. 159. The revenue having fallen into arrears, the Collector, under the same section, took the land under his own management. Subsequently, under ss 165 and 43 of the Act, the land was settled with *G*'s wife. In a suit to enforce against the lands a mortgage executed by *G* to the plaintiff. —*Held* that the Court was precluded by the terms of s. 241, cl. (*f*), of the Revenue Act from entering into the question whether the settlement was legally made by the Collector with the wife of the mortgagor, that she must therefore be taken to represent such rights and interests as the mortgagor possessed, and that consequently the estate was liable in her hands for the mortgage, and the mortgagee was entitled to claim foreclosure against her. BABI BABU *v.* GULAB CHAND . . . . I. L. R., 7 All., 454

255. ——— Suit to resume a rent-free grant—*Services—N.-W. P. Rent Act (XII of* ...

... perform certain services as a mimic, and that these services were discontinued by the defendant's vendor The plaintiff endeavoured to resume the land in the Revenue Court as a rent-free grant under s. 30 of the N.-W. P. Rent Act (XII of 1881), but the application was rejected. In answer to the suit, the defendant pleaded that it was not cognizable by the ...

... Act, and that the Civil Court therefore had jurisdiction to entertain the suit *Held* by MAHMOOD, J., that the land constituted a rent-free grant, that the claim was one for the resumption of such grant ...

... of land, and the grantee in the present case was a tenant who rendered rent in this sense on account of the use of the land. Further, there was no such grant as is contemplated by s 30 of the Rent Act,

JURISDICTION OF CIVIL COURT
—continued.

25. RENT AND REVENUE SUITS—*continued.*

Act. *Mutty Lall Sen Gywal* v. *Deshkar Roy, B. L. R., Sup Vol., 774* 9 *W. R.*, 1, and *Puran Mal* ... *Per* ... the ... within ... t or ... X of

1873), and the word "render" in s. 3 of the former Act does not include or imply the rendering of services or labour. The word "rent" is probably used as the equivalent of the Hindustani words lagan or poth representing the compensation receivable by the landlord for letting the land to a cultivator, and s. 3 of the Rent Act, where it uses the expressions "paid, delivered, or rendered," must be taken to refer respectively to rent paid in cash, to rent delivered in kind, and to rent rendered by appraisement or valuation of the produce. The grant in the present

The scope of s. 10 of Regulation XIX of 1793 is not limited to permanent rent-free grants, and the present

Khuda Yar Khan, I L R, 7 All., 191, and *Forbes* v. *Meer Mahomed Tuquee, 13 Moore's I A., 438*, referred to. WARIS ALI *v.* MUHAMMAD ISMAIL

[I. L. R., 8 All., 552

(*d*) OUDE.

256. ———— Suit for partition and account of talukhdari estate—*Oude Rent Act*

estate and the proceeds thereof to be managed and applied according to the trust declared in favour of the members of the family. The plaintiff in that suit afterwards obtained entry of his name as a co-sharer in the villages in the register kept under

JURISDICTION OF CIVIL COURT
—continued.

25. RENT AND REVENUE SUITS—*concluded.*

Act XVII of 1876, s 56, and then brought the first of the present suits for his share upon partition, both in that estate as it stood in 1865 and also with the addition of villages since acquired out of profits claiming an account against the talukhdar. The latter alleged, among other defences, that the talukhdari estate was impartible, and brought a cross-suit to establish this, and also that it was held by him according to the rule of primogeniture, the right of other members of the family being only to the profits *Held* that the provisions of the Oudh Rent Act (XIX of 1868) s 83 cl 15, and s. 106, precluding proceedings in the Civil Court, might be applicable to the proceeds of the villages forming the original estate, the claimant having been recorded in the revenue records as a shareholder therein, but could not be applied to the rest of the joint estate, and the Civil Court therefore had jurisdiction. PIRTHI PAL *v.* JOWAHIR SINGH . I. L. R., 14 Calc., 493

[L. R., 14 I. A., 37

26. REVENUE.

257. ———— Suit to try liability to public revenue on land—*Wrongful acts by executive officer of Government.*—The Civil Courts have jurisdiction to entertain suits brought to try

the circumstance that the acts complained of were done in enforcing payment of a revenue assessment sanctioned by Government does not, *per se*, preclude the jurisdiction of the Court to entertain the suit. But acts done by Government through its executive officers, not contrary to any existing right according to the laws administered by the Municipal Courts, although they may amount to grievances, would afford no cause of action cognizable by the Civil Courts. UPPU LAKSHMI BHAYAMMA GARU *v.* PERVIS . . . . . . 2 Mad., 167

258. ———— Suit against officers of sea customs for act done without jurisdiction—*Revenue, Matter concerning—53 Geo. III, c. 155, ss 99 and 100—Mad. Reg. IX of 1803, s 55.*—*Per* INNES and KERNAN, *JJ.* (*dissentient* THE CHIEF JUSTICE)—The High Court of Madras

... jurisdiction of the High Court, but has been impliedly repealed by those Letters Patent *Per* KERNAN, *J.*—The said provision was repealed by 53 Geo III, c. 155, ss 99 and 100, except as to land revenue. *Per* INNES, *J*, *contra*. *Per* THE CHIEF JUSTICE and INNES, *J.*—The District Court of Chingleput continued down to the year 1876 to have jurisdiction under Madras Regulation IX of 1803, s. 55, in suit

JURISDICTION OF CIVIL COURT —*continued.*

26 REVENUE—*continued.*

against customs officers at Madras. COLLECTOR OF SEA CUSTOMS *v.* CHITHAMBARAM [I. L. R., 1 Mad., 89

259. Payment of hak in respect of majumdari watan — *Bom. Act VII of 1863, s. 32* —The payment of a hak in respect of a majumdari watan, though charged on villages, is not "a share of the revenues thereof" within the meaning of s 32 of (Bombay) Act VII of 1863, and therefore a suit to recover majumdari watans resumed by Government is cognizable by the Civil Courts. GOVERNMENT OF BOMBAY *v.* DAMODHAR PARMANANDAS . . . . . 5 Bom., A. C, 202

260. ——— Land revenue — *Toddy spirit—Bombay Revenue Jurisdiction Act (X of 1876), ss. 3, 4, 5 — Bombay Abkari Act (V of 1878), ss. 24, 29, 54, and 67—Land Revenue Code (Bom. Act V of 1879), s. 82—Bom. Reg. XXI of 1827, s. 60*—The plaintiff sued to recover from the defendant, a farmer of abkari duties on the manufacture of spirits, under s. 60 of Bombay Regulation XXI of 1827, a sum of money alleged to have been illegally levied by him as tax or rent through the mamlatdar in respect of certain cocoanut trees tapped by the plaintiff in 1877-78 and 1878-79 *Held* that the Civil Courts have jurisdiction to entertain such a suit. If the claim be held to be one in respect of land revenue, it falls within the exception contained in cl (*c*) of s. 5 of Act X of 1876. If it is not, s. 4 of the Act has no application *Per* BIRDWOOD, *J*—The expression "land revenue" as used in Act X of 1876 does not include either the duties leviable, under Regulation XXI of 1827, on the manufacture of spirits, or the taxes on the tapping of toddy trees, the levy of which in certain districts was legalized by s. 24 of the Bombay Abkari Act (V of 1878) A farmer of duties on the manufacture of spirits is not authorized to levy a duty on any juice in trees, either under Regulation XXI of 1827, or Act X of 1876, or Bombay Act V of 1878 Juice in toddy-producing trees is not spirit, which includes toddy in a fermented state only. NARAYAN VENKU KALGUTKAR *v.* SAKHARAM NAGU KOREGAUNKAR [I. L. R., 9 Bom., 462

261. ——— Suit to recover possession of land added to estate paying revenue

RAM JEWAN SINGH *v.* COLLECTOR OF SHAHABAD [19 W. R., 127

262. ——— Water-rate—*Irrigation Act (Bom. Act VII of 1879), s 48—Bombay Revenue Jurisdiction Act (X of 1876), s. 4, cl. (b)—Land revenue—Percolation of canal water—Opinion of the canal officer.* Where water-rate is levied under s. 48 of the Irrigation Act (Bom Act VII of 1879), the question as to the jurisdiction of Civil Courts in a suit for the determination of the legality or otherwise of such levy depends upon whether the incidence of the rate is authorized by the provisions of the section. Under it, the condition precedent to levying the rate is not the fact ascertained by evidence whether the water in dispute has percolated from the canal, but the opinion of the canal officer that it has so percolated, he and not the Civil Court being made the Judge of such percolation for the purposes of the Act. Such water-rate falls within the denomination of land revenue. BALVANT GANESH OZE *v.* SECRETARY OF STATE FOR INDIA . . . I. L. R., 22 Bom., 377

27. REVENUE COURTS.

(*a*) GENERALLY.

263. ——— Suits which cannot be brought in Revenue Court for want of jurisdiction —*Semble*—There is authority for holding that the Civil Courts may entertain suits which cannot be brought in a Revenue Court, although a portion of the claim is of a nature of which the exclusive cognizance is given to Revenue Courts. OOSMAN KHAN *v.* CHOWDHRY SHEORAJ SINGH . 5 N. W, 42

264. ——— Claims to money in deposit with Collector—*Civil Procedure Code, 1859, ss. 237, 242* —S 237 of the Civil Procedure Code, 1859, gave no authority to a Civil Court to dispose of claims to money in deposit with a Collector, nor did s. 242 give such a Court authority to dispose of claims to money under attachment. IN THE MATTER OF FROJONATH MITTER . . 13 W. R., 301

(*b*) PARTITION.

266. ——— Suit to set aside partition —*Question of title.* There is nothing in the law which makes the order of a Collector in a batwara proceeding final as regards questions of title. OODOY SINGH *v.* PALUCK SINGH . . 16 W. R., 271

267. ——— Suit for partition of land paying revenue.—Where the real object is to

JURISDICTION OF CIVIL COURT —*continued*.

27. REVENUE COURTS—*continued*.

obtain a division of the lands of an estate paying revenue to Government, the suit is not maintainable in a Civil Court. DOORGA KRIPA ROY *v.* MOHESH CHUNDER ROY . . . 15 W. R., 242

268. ——— **Suits for partition of estates paying revenue to Government**—*Beng. Reg. XIX of 1814, s. 3—Apportionment of revenue.*—Regulation XIX of 1814, s. 3, which requires that

...

the Civil Courts SHAMA SOONDUREE DEBIA *v.* PURESH NARAIN ROY . . 20 W.R., 182

269. ——— **Suit to set aside partition under Beng. Reg. XIX of 1814 and for redistribution of shares in estate.**—The plaintiffs and defendants were owners of an undivided estate. Besides their share as part-owners, the plaintiffs held

...

plaintiffs held as tenants and as purchasers were allotted to co-sharers other than those under whom the

...

RADHA BULLUBH SINGH *v.* DHEBAS MAHTA CHAND . . . . 2 W. R., Mis., 51

270. ——— **Suit by allottee at private** ... his ... ngs ... by ... vate

...

patent to make an assignment of the revenue in proportion to the several portions of the land held by the shareholders, and the Civil Court was entitled to adjudicate on the plaintiff's claim to be in possession of lands as comprising his *share in the estate*, and, on his succeeding in proving his claim, to declare

that those lands belonged to his divided share. JOYNATH ROY *v.* LALL BAHADUR SINGH

[I. L. R., 8 Calc., 123 : 10 C. L. R., 146

271. ——— **Suit to establish shares**

...

event of the Collector under the batwara law rejecting their application for a division of their specific shares. KHEDOO THAKOOR *v.* BHUGWUT LALL

[16 W. R., 9

272. ——— **Suit for partition of lands**

...

excluded lands on the basis of the former partition. *Sree Misser v. Crowdy, 15 W. R., 243*, distinguished. KRISHNO KUMAR BAISAK *v.* BHIM LALL BAISAK

[4 C. L. R., 38

273. ——— **Suit for declaration of right to share.**—There is nothing in the butwara law or in any other regulation to prevent the Civil Court from entertaining a suit for a declaration of the plaintiff's right to a larger share than that recorded in his name in the paper of partition. SPENCER *v.* PUHUL CHOWDRY. SPENCER *v.* KADIR BUKSH . 6 B. L. R., 653 : 15 W. R., 471

See AHMEDULLA *v.* ASHRUFF HOSSEIN

(8 B. L. R., Ap., 73 note

274. ———**Suit for partition**—*Revenue-paying estate—Partition—Civil Procedure Code (Act X of 1877), ss. 11, 265.*—Where one of several co-sharers, owners of a piece of land defined by metes and bounds and forming part of a revenue-paying estate, brings a suit for partition, in which he does not seek to have his joint liability for the whole of

...

[... Calc., 153

275. ——— **Suit to have possession on private partition confirmed**—*Declaration against jurisdiction of Revenue Court to partition—Specific Relief Act, 1877, s. 42.*—Certain proceedings having been instituted to obtain a batwara of an estate ...

JURISDICTION OF CIVIL COURT —continued.

27 REVENUE COURTS—continued.

certain orders made by the Collector in the batwara proceedings might be set aside. The Collector was not a party to the suit. The lower Court found that

diction to proceed with the batwara. *Held* that the Court had no jurisdiction to set aside the orders of the Collector, and that the Court not having determined the specific property held exclusively under the partition by the plaintiff, the declaration in the decree was not warranted by s. 42 of the Specific Relief Act (I of 1877). CHURAMAN SINGH v. ANOOP SINGH . . 11 C. L. R., 533

276. ———— Suit by purchaser at revenue sale for possession of share *Partition suit.*—The purchaser at a sale, under Act XI of 1859, s. 54, of a share of an aymah estate sued for possession of the lands in the occupation of the sharer whose rights and interests he had purchased. The other sharers (also defendants in the suit), who had previous to the sale preferred an application under s. 11 and made a separate account of their shares with the Collector, alleged that plaintiff was in possession of all that he could claim as purchaser. The lower Courts gave plaintiff a modified decree, from which some of the defendants appealed. *Held* that the suit was not a suit for partition, and that the Civil Court had jurisdiction. AFTABOODDEEN v. SHUMSOODDEEN MULLICK . 18 W. R., 461

277. ———— Suit for injunction to restrain partition.—A Civil Court cannot interfere by injunction to restrain a Collector's power of partition, but where, as between the several shareholders, the extent and nature of the share of each

[3 C. L. R., 453

278. ———— Suit to enforce partition— *Beng. Reg. VII of 1822—Act XIX of 1863.*—An imperfect partition was made between *P* and *D*, and assented to by them and accepted by the Deputy Collector. In the instrument in which the parties

value, and, because *P* persisted in denying this, ordered an interchange of lots, imputing fraud to *P*, but not making any enquiry whether or not *D* had been induced by fraud to assent to the partition. It was held that the Deputy Collector had no power to order an interchange of lots, and that the Civil Courts had jurisdiction to entertain a suit by *P* to restore him to the possession of the land which fell to him on the partition made and assented to by the parties, and completed by the order of the Deputy Collector accepting it. DESRAJ v. DHUNI

[7 N. W., 9

279. ———— Suit for extra land after partition by revenue authorities—*Act XIX of 1863, s. 53—N.-W. P. Land Revenue Act (XIX of 1873), s. 135.* A partition was arranged by arbitrators and carried into effect by an ameen who marked out the boundaries of the pattis into which the mouzah was divided, and was accepted on the 20th of April 1871 by the parties concerned and was sanctioned by the Commissioner. In November 1872, one of the parties complained that, according to a gashwara (map) filed by the ameen on the 9th of June 1871, he was entitled to more abadi land than he had got. The revenue authorities, considering that he had accepted the partition and that it had been confirmed, refused to entertain his complaint. He accordingly sued in the Civil Court with a view to obtain the extra land to which he asserted himself entitled. It was held that s. 53, Act XIX of 1863, would have precluded the suit, and it was equally barred by the spirit, if not by the letter, of s. 135, Act XIX of 1873. FIDA HOSSEIN v. GHOLAM JILANI . . . 7 N. W., 346

280. ———— Suit to set aside erroneous settlement by Collector.—A Civil Court may set aside a settlement of land erroneously made by the Collector as forming part of a resumed mehal, if the land has not actually been resumed. ABBOO BIBEE v. COLLECTOR OF BACKERGUNGE

[1 W. R., 255

281. ———— Suit to set aside order under Act XIX of 1863. An order passed in the course of a partition under Act XIX of 1863 is open to revision under s. 53 of that Act, but is not liable to be contested in a civil suit. ISHREE DYAL v. BANTADEE TEWAREE . . . 4 N. W., 7

282. ———— Suit by parties declared out of possession by Revenue Court for establishment of their rights—*Act XIX of 1863, ss. 8, 9, 10, 11.*—Two of the parties in an application, under Act XIX of 1863, for the partition of a joint undivided estate were found to be out of possession. *Held* there was nothing in s. 8, 9, 10,

JURISDICTION OF CIVIL COURT —*continued.*

27. REVENUE COURTS—*continued.*

283. ——— Suit to set aside order of Settlement Officer as to proportion of profits—*Beng. Reg. VII of 1822, s. 10 cl. 1.*—The plaintiffs, biswadars, sued to set aside the order of a settlement officer, which determined the propr-

[4 N. W., 129

284. ——— Suit in Civil Court for

BEBA v. GOVERNMENT 6 C. L. R., 365

285. ——— Suit to alter settlement—*Beng Reg. VII of 1822, s. 15.*—Lakhirajdars whose lands have been resumed have the right, under s. 15, Regulation VII of 1822 (if not barred by limitation), to bring a civil suit to revise, annul, or alter a settlement made by the Collector, not only as against those who claimed the settlement before the revenue authorities, but against all who have claims. BISHOROOP HAZRAH v. DUMONOTEE DEBIA

[15 W. R., 537

286. ——— Partition of mehal—*Application by co-sharer for partition—Notice by Collector to other co-sharers to state objections upon a specified day—Objection raised after day specified by original applicant—Question of title—Distribution of land—N.-W. P. Land Revenue Act (XIX of 1873), ss. 111, 112, 113, 131, 132, 241 (f)—Civil Procedure Code, s. 11.*—So far as ss. 111, 112, 113, 114, and 115 of Act XIX of 1873 are concerned, a Civil Court is the Court which has jurisdiction to adjudicate upon a question of title or proprietary right, either in an original suit in cases in which the Assistant Collector or Collector does not proceed to inquire into the merits of an objection raising such a question under s. 113 or on appeal in those cases in which the Assistant C[illegible]

the Court of Appeal from the Assistant Collector or the Collector upon such questions, nor does s. 241 (*f*) bar the jurisdiction of the Civil Court to adjudicate upon them. Where, therefore, after the day specified in the notice published by the Assistant Collector under s. 111, and after an ameen had made an apportionment of lands among the co-sharers of the mehal, the original applicants for partition raised for the first time an objection involving a question of title or proprietary right, and this objection was disallowed by the Assistant Collector and the partition made and confirmed by the Collector under s. 131,—*Held* that the objection was not one within the meaning of s. 113, that the remedy of the objectors was not an appeal from the Collector's decision under s. 132,

287. ——— Suit for partition—*Revenue-paying estate—Proceedings under Beng. Act VIII of 1876, s. 31, Effect of.*—The jurisdiction of the Civil Court in matters of partition of a revenue-paying estate is restricted only in questions affecting the right of Government to assess and collect in its own way the public revenue. *Held*, accordingly, that pendency of partition proceedings before the Collector under s. 31 of Bengal Act VIII of 1876 was no bar to a suit for a declaration that under a partial partition effected between the co-sharers a portion of land had been separately allotted to the plaintiff. ZAHRUN v. GOWRI SUNKAR

[I. L. R., 15 Calc., 198

288. ——— Suit for partition and possession of a share in a particular plot in a pottah—*Jurisdiction of Revenue Court—N.-W. P. Land Revenue Act (XIX of 1873), ss. 135, 241 (f).*—A suit by a co-sharer in a joint zamindari estate for partition and possession of his proportionate share of an isolated plot of land is not maintainable in a Civil Court with reference to ss. 135 and 240 of the N.-W. P. Land Revenue Act (XIX of 1873) *Ram Dayal v. Megu Lal, I. L. R., 6 All., 452,* distinguished IJRAIL v. KANHAI

[I. L. R., 10 All., 5

289. ——— Partition by Civil Court of a portion of a revenue-paying estate—*Civil Procedure Code (Act XIV of 1882), s. 265—Revenue-paying estate, Partition of, into several revenue-paying estates.*—The meaning of s. 265 of the Code of Civil Procedure is that, where a revenue-paying estate has to be partitioned into several revenue-paying estates, such partition must be carried out by the Collector. *Zahrun v. Gowri Sunkar, I. L. R., 15 Calc., 198,* approved. DEBI SINGH v. SHEO LALL SINGH

[I. L. R., 16 Calc., 203

JURISDICTION OF CIVIL COURT —*continued.*

27. REVENUE COURTS—*continued.*

(c) ORDERS OF REVENUE COURTS.

290. ———— **Suit to reverse order of Revenue Court.**—Parties suing to reverse an order of the Revenue Courts may do so in the Civil Courts. NANKU ? OT v. MAHABIR PRASAD [3 B. L. R., Ap., 35: 11 W. R., 405

Contra, HASSAN ALLEE v. BUDDEROODDEEN [1 W. R., 141

MAHOMED FAZUL v. OOMAKANT SEIN [1 W. R., 159

291. ———— **Suit to set aside proceeding of Collector in execution.**—A Civil Court cannot set aside the proceeding of a Collector in execution of a decree of his own Court. RAJ KISHORE MULLICK v. BRINDABUN CHUNDER PODDAR [15 W. R., 119

292. ———— **Suit under Beng. Act VIII of 1865, s. 13**—*Appeal to Collector.*—An appeal to the Collector was not necessary as a condition precedent to a suit in the Civil Court under s. 13, Bengal Act VIII of 1865. NUGENDRO CHUNDER GHOSE v. MUSHUFF BIBEE 15 W. R., 17

293. ———— **Suit to question award of Collector under Act I of 1847** *Boundaries* —An award of the Collector under Act I of 1847 in respect of boundaries was not final, even though undisturbed on appeal; nor was he competent to do more than demarcate by visible and tangible marks the boundaries between estates and fields. His award, therefore, was liable to be questioned by a suit in the Civil Court. RAM JEWUN SINGH v. RADHA PERSHAD SINGH . . . . . 16 W. R., 109

294. ———— **Suit to compel purchaser at sale for arrears of rent to furnish security**—*Beng. Reg. VIII of 1819, ss. 5 and 7.*—A zamindar cannot bring a suit in the Civil Court to compel the purchaser of a patni in his estate sold by auction for arrears of rent to furnish security for the amount of half the yearly jama. If the purchaser of the patni is not willing to give

over the surplus to the patnidar, who, moreover, is

295. ———— **Order of Collector under s. 11, Act XI of 1859, Power of Civil Court to interfere with.**—*Quære*—Whether the Civil Court can interfere with a Collector's order, under s. 11, Act XI of 1859, opening a separate account with the recorded sharer of a joint estate. SHURUFOONISSA BEBEE v. HUSMUT ALI . 9 W. R., 533

296. ———— **Suit to set aside order of Collector**—*Act XI of 1859, s. 11.*—The plaintiff and *A* and

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A and *B* al

lands of the

the Collector, under s. 11 of Act XI of 1859, to open a separate account for payment of the proportionate share of the revenue payable in respect of the lands so alienated. The plaintiff objected to such separation on the ground that the lands had never been divided, but always held ijmali, and that *A* and *B*, claimed a larger share than they owned; but his

the order of the Collector set aside. *Held* that the Civil Court had jurisdiction to entertain such a suit, and that it was not necessary to make the Collector a party. HARGOBIND DAS v BARODA PRASAD DAS [6 B. L. R., 614 15 W. R., 112

MADAN MOHUN MAZUMDAR v. BAISTAB CHANDRA MANDAL. PURNA CHANDRA GANGULI v. MADAN MOHAN MAZUMDAR [6 B. L. R., 617 note: 13 W. R., 67

297. ———— **Suit to set aside order of Revenue Court under Act XIX of 1863.**—A suit in the Civil Court did not lie to set aside the decision passed by the revenue authorities in the exercise of the power vested in them by s. 8, Act XIX of 1863. However irregular the proceedings be, and not in conformity to the provisions of that section, the proper course for the party aggrieved was by appeal in the manner prescribed by the Act. BUKHTA v. GUNGA . . . . . 3 Agra, 161

298. ———— Interference with decrees

299. ———— **Suit to set aside decree for fraud**—*Act X of 1859, s. 23*—The provisions of s. 23, Act X of 1859, are no bar to the institution in the Civil Court of a suit by a raiyat, farmer, or tenant for maintenance of possession, nor to a suit to set aside a decree of a Revenue Court on the ground that it had been obtained by fraud. RAMSEWAR CHOWDHUREE v. NACKCHEDEE SINGH [3 Agra, 357 S. C. Agra, F. B., Ed. 1874, 160

300. ————*Suit to set aside decree on kabuliat alleged to be false—Failure to show fraud.*—Plaintiff had executed a kistbundi for arrears of rent decreed against him by a Revenue Court. He then sued to set aside the decree and kistbundi on the ground that the decree had been

JURISDICTION OF CIVIL COURT —*continued.*

27. REVENUE COURTS—*continued.*

based on a fraudulent and fictitious kabuliat. The

BIBEE v. MAHOMED JAMAL 12 W. R., 380

301. ——— Suit to set aside order of

302 ——— Suit to set aside order of Collector for registration of names.—A suit will not lie in the Civil Court to set aside an order by a Collector, made under s 27, Act X of 1859, for the registration of the names of the defendants as shikmi talukhdars in the plaintiff's serishta. MAHOMED NOOR BUKSH v. MOHUN CHUNDER PODDAR [6 W.R., Act X, 67

303. ——— Suit to establish claim to tenure not requiring registration—*Transfer of tenure not requiring registration in zamindari serishta—Suit to establish claim to tenure*—The sub-letting of a tenure does not necessarily make a raiyat a middleman A raiyat who holds land under cultivation by himself, or by others taking under him, is not a middleman. His holding, therefore, was not one the transfer of which required registration under s 27, Act X of 1859, and a suit will lie in the Civil Court in such a case by an unsuccessful claimant under s. 106 of that Act. KAROO LALL THAKOOR v LUCHMEEPUT DOOGUR 7 W. R., 15

304. ——— Suits to reverse summary awards for rent *Question of title.*—In a suit brought by raiyats to reverse summary awards for rent, the Court, instead of deciding the question of title between the co-defendants, should merely determine to whom the plaintiffs have paid rent in past years, and their liability for the present year, in accordance with their past payments and the possession of the

305. ——— Suit to set aside order of Revenue Court directing ejectment—*Cause of action—Res judicata.*—A Revenue Court having ordered a tenant to be ejected under s 10 of the Rent Recovery Act on the ground that he had

I. L. R., 9 Mad., 39

306. ——— Order of ejectment—Suit to set aside such order—*Madras Rent Recovery Act (Mad. Act VIII of 1865), s 10.*—*Held* (DAVIES, J., *diss*) that a tenant who has been ejected in pursuance of an order under Rent Recovery Act (Madras), s 10, cannot maintain a suit to question the legality of that order. *Ragara v. Rajagopal, I. L. R, 9 Mad, 39*, followed. MANICKA GRAMANI v. RAMACHANDRA AYYAR [I. L. R., 21 Mad., 482

307. ——— Suit for money paid as rent—*Rent paid twice.*—The plaintiff sued to recover money which she had paid as rent to the zamindar, under a decree of the Revenue Court, after she had already paid her rent to his gomastah. *Held* that the suit was not cognizable by the Civil Court. SAUDAMINI DASI v. THAKOMANI DEBI [3 B L. R., Ap., 114

308. ——— Suit after decision of Revenue Court under Act X of 1859, s. 77—*Question of title*—After a decision by a Revenue Court under s. 77, Act X of 1859, a Civil Court might determine the legal title to the rent; and, when determining such title, the Civil Court might also determine whether any rent which may have been lost to a party by the decision of the Revenue Court might not be recouped to him KEFAET HOSSEIN v. SHUMSHARE ALI . 13 W. R., 458

309 ——— Enquiry into legality of proceedings of Collector—*Beng. Act VII of 1868*—*Certificate under s. 15.*—In a suit for arrears of rent it appeared that the plaintiff claimed under a pottah granted by the owner of land after a certificate had been issued against him out of a Collector's office under Bengal Act VII of 1868 The defendants had purchased the land in question at a sale held under the Act. The plaintiff alleged that the certificate had not been served, and that no notice before the certificate was issued was served upon the grantor as required by s 18 of the Act; and he contended that, as the Collector's proceedings were irregular, the pottah was valid. The District Judge held that the Civil Court had no power to enquire into the Collector's proceedings, and must, as nothing appeared to the contrary, assume that they were regular, and dismissed the suit. *Held* that the Judge was bound to examine the proceedings of the Collector to see that they were legal and regular so as to constitute a legal bar to the grant of the pottah, and that the Judge was not at liberty to make any presumption in favour of their legality or correctness. HEM LOTTA v. SREEDHONE BOROOA [I. L. R., 3 Calc., 771

310. ——— Suit for execution of decree in summary suit for rent—A regular suit to enforce a decree obtained in a summary suit for rent, which the Revenue Court has refused to execute upon the ground that it has been satisfied, cannot be maintained in the Civil Court (STEER, J., dissenting) ANANDA MAYI DASI v PATIT PABUNI DASI B.L. R., Sup. Vol., 18: W. R., F. B., 118

311. ——— Suit to enforce decree of Revenue Court.—As a general rule, a suit cannot be brought in a Civil Court to enforce a decree of a

JURISDICTION OF CIVIL COURT—*continued.*

27. REVENUE COURTS—*continued.*

Revenue Court under Act X of 1859. Such decrees can be enforced only by execution, and the limitation for proceedings to execute them was defined by Act X itself. AGHORE CHUNDER MOOKERJEE *v.* WOOMA SOONDEREE DABEA . 7 W. R., 216

ODHESH COOMAR SINGH *v.* RAM GOBIND SINGH [9 W. R., 145

312. ——— Suit for recovery of compensation awarded to a purchaser at a revenue sale—*Maintainability of such a suit—Beng. Act VII of 1868, s. 2.*—A suit by a purchaser of an estate sold for arrears of Government revenue for recovery of compensation awarded to him under s. 2 of Act VII (B. C.) of 1868, by a Commissioner who set aside the sale, is maintainable in a Civil Court. CHUTTU LAL *v.* BHAGWATI PROSAD [1 C. W. N., 447

313. ——— Suit for amount due under decree in rent suit.—*J K D* instituted a suit before a Deputy Collector, under Act X of 1859, against *L N R*, for money due from the defendant

stipulated that, on failure to pay any instalment, "the whole debt will be realized at once, and I (*L N R*) shall be charged interest at half per cent. per month . . . . and it is prayed that the case be disposed of according to the above terms." The Deputy Collector decreed—"Let the case be disposed of in accordance with the terms of the compromise." *J K D* assigned his interest under that decree to *R M D*. *L N R* failed to pay an instalment. *R M D* then applied to the Deputy Collector to

promise contemplated that the whole amount and interest should be realized only by process of execution to be issued out of the Revenue Court, which was to be delayed till a failure to pay an instalment had taken place. On the refusal of the Deputy Collector to issue execution for the amount of the debt, the plaintiff should have appealed to the Commissioner. RAM MOHAN DAS *v.* LAKHI NARAYAN ROY [4 B. L. R., A. C., 207

S. C. LUCKHEE NARAIN ROY *v.* RAM MOHUN DOSS . . . . . . 13 W. R., 151

314. ——— Suit to set aside sale by

JURISDICTION OF CIVIL COURT—*continued.*

27. REVENUE COURTS—*continued.*

315. ——— Suit to set aside sale for arrears of revenue—*Act XI of 1859, s. 33.*—

suit for the annulment of the sale. MOHUN LALL TAGORE *v.* COLLECTOR OF TIRHOOT 1 W. R., 356

316. ——— Suit by under-tenant to recover tenure sold for arrears of rent—*Act X of 1859, s. 106.* An under-tenant might sue in the Civil Court to recover his under-tenure sold by his zamindar for arrears of rent, although he did not previously intervene in the Collector's Court, under s. 106, Act X of 1859. MOOKTOKASHEE DASSIA *v.* BROJUNDER COOMAR ROY 3 W. R., Act X, 156

Collector under s. 14, Bengal Act VI of 186—

318. ——— Suit to recover land sold in execution of decree for rent.—A suit lay in the Civil Court for the recovery of land fraudulently sold in execution of a decree for rent, under Act X of 1859, against a party not in possession without suing specifically to set aside the sale. NOOR BUKSH *v.* MEAN JAN . 6 W. R., Act X, 60

319. ——— Suit to set aside sale of under-tenure—*Act X of 1859, s. 108.*—The owner of an under-tenure might sue in the Civil Court for a declaration that the sale of his under-tenure under Act X of 1859 was illegal and void under s. 108 of that Act, and that he was entitled to possession of the land in suit notwithstanding such illegal sale. SHUROOP CHUNDER BHUTTACHARJEE *v.* KASHEESHUREE DOSSIA . . 6 W. R., Act X, 55

320. ——— Suit to set aside revenue sale on account of fraud.—An *ex-parte* decree for an arrear of rent having been passed by a Revenue Court against certain tenants, and their land having been put up for sale in execution and bought by the

principle that the defendants should not be allowed to take advantage of their own fraud, it was decreed

JURISDICTION OF CIVIL COURT
—continued.

27. REVENUE COURTS—*continued.*

(the purchase-money being still in deposit in the *Collectorate) that the defendants should re-convey* the property to the plaintiffs. SHIBO SOONDUREE DOSSEE *v.* PANCHCOWREE CHUNDRA 14 W. R., 158

321. ——— An action lies in the Civil Court to set aside a purchase fraudulently made at a sale in execution of a decree of a Revenue Court which has been obtained by fraud. NILMANI BURMICK *v.* PUDDO LOCHAN CHUCKERBUTTY
[B. L. R., Sup. Vol., 379 : 5 W. R., Act X, 20

AGHORE LALL SHAMUNT *v.* GYANANUND ROY
[6 W. R., Act X, 11

BUCKLAND *v.* ASHOO CHOWDHRAIN
[9 W. R., 326

BROJENDRO COOMAR CHOWDHRY *v.* RAM COOMAR HOLDAR . . . . . . 13 W. R., 32

DEEN DYAL SINGH *v.* DANEE ROY
[13 W. R., 185

322. ——— **Suit to set aside sale of under-tenure under Act X of 1859**—*Fraud* [illegible]

DOSS DUTT *v.* RAMNARAIN GHOSE
[B. L. R., Sup. Vol., 625
2 Ind. Jur., N. S., 111 : 7 W. R., 183

SOUDAMINEE DOSSEE *v.* BHOLANATH SHAHA
[9 W. R., 363

323. ——— **Suit to set aside sale in execution of decree**—*Act X of 1859, s. 105—Fraud.*—The Civil Court had jurisdiction to entertain a suit instituted by *A* to set aside a sale of his tenure under s. 105 of Act X of 1859 on the ground that the sale was held under a decree obtained fraudulently against *B*, who was not the real owner. RAMSUNDAR PORAMANICK *v.* PRASANNA KUMAR BOSE
[B. L. R., Sup Vol., 382 : 5 W. R., Act X, 22

324. ——— **Suit to set aside sale for arrears of rent**—*Act X of 1859, s. 105—Fraud.*—A Civil Court had jurisdiction to entertain a suit by a tenant to recover possession of a tenure from an auction-purchaser at a sale for arrears of rent under s. 105 of Act X of 1859, although there is no allegation of fraud, the tenant not having been a party to the decree for arrears of rent. MEAH JAN MUNSHI *v.* KURRUNAMAYI DEBI . 8 B. L. R., 1

325. ——— **Suit to set aside sale by order of Revenue Court**—*Fraud.*—A sale by order of a Revenue Court can be set aside by a decree of the Civil Court, even if held directly under Act XI of 1859. In this case the sale had taken place under s. 110 of Act X of 1859. JOYDOORGA DEBIA *v.* GOPAL CHUNDER BANERJEE
[9 W. R., 538

JURISDICTION OF CIVIL COURT
—continued.

27. REVENUE COURTS—*continued.*

326. ——— **Suit to set aside illegal sale by Collector.**—In a suit to set aside a sale by a Collector under Act X of 1859, on the allegations [illegible]

NUBEE BUKSH . . . . . 9 W. R., 600

See BALKRISHEN DAS *v.* SIMPSON
[I. L. R., 25 Calc., 833
2 C. W. N., 513

327. ——— **Suit by judgment-debtor to set aside sale by Revenue Court.**—The Civil Court has jurisdiction to entertain a suit by judg- [illegible]

void. CHANDRAKANT BHATTACHARJI *v.* JADUPATI CHATTERJI
[1 B. L. R., A. C., 177 : 10 W. R., 224

328. ——— **Suit to set aside Collector's sale and recover property**—*Costs of partition—Order of Collector for payment of proportionate share of costs by co-sharers—Suit to set aside sale.*—The Civil Court decreed partition (batwara) of an estate in a suit brought by some of the co-sharers in the estate, and ordered the plaintiffs to pay the costs of the partition. The Collector, however, called upon [illegible]

[2 B. L. R., F. B., 1 : 10 W. R., F. B., 66

329. ——— **Order of Collector setting aside sale for arrears of revenue**—*Revenue Sale Act (XI of 1859), s. 33—Sale for arrears not* [illegible]

[illegible] and specified in an appeal to the Commissioner as provided for in s. 3[illegible] of Act XI of 1859. *Baij-* [illegible]

JURISDICTION OF CIVIL COURT —*continued.*

27. REVENUE COURTS—*continued.*

330. ———— Suit to set aside sale when made without arrears of revenue being due —*Sanction of Commissioner* —A suit to set aside a sale under Act XI of 1859 on the ground that no arrear of revenue was due, may be brought in the Civil Court without previous appeal to the Commissioner. THAKUR CHURN ROY *v.* COLLECTOR OF 24-PERGUNNAHS . . 13 W. R. 336

331. ———— Suit to question regularity of sale in execution under Collector's order.—When a sale had taken place by order of the Collector in execution of a decree under Act X of 1859, a civil suit lay for the purpose of questioning the regularity and propriety of the proceeding. Where circumstances indicate not merely irregularity, but irregularity brought about by the contrivance of the decree-holder, the Civil Court has jurisdiction to set the sale aside, and is right in doing so. TEKAET BHAO NARAIN DEO *v.* COURT OF WARDS . . . . . 15 W. R., 59

dissenting from RUTTUN MONEE DOSSIA *v.* KALEEKISSEN CHUCKERBUTTY . W. R., F. B., 147

332. ———— Suit by person injured by sale of non-transferable tenure in execution of decree of Revenue Court—Where a tenure has been sold in execution of a decree by a Revenue Court, a third person, not a party to the [illegible]

protection against the probable injurious consequences to himself of the Collector's decree. JOYKISHEN MOOKERJEE *v.* HUREEHUR MOOKERJEE [9 W. R., 286

333. ———— Suit to set aside sale on ground other than fraud—*Act X of 1876, s. 4—Sale for arrears of revenue—Suit to set aside.*—S. 4, cl. (c), of Act X of 1876 excepts from the jurisdiction of the Civil Courts claims to set aside, on account of irregularity, mistake, or any other ground except fraud, sales for arrears of land revenue. *Quære*—Whether the exception of fraud in the above enactment is confined to fraud on the part of officers conducting sales for arrears of land revenue. BALKRISHNA VASUDEB *v.* MADHAVRAV NARAYAN [I. L. R., 5 Bom., 73

334. ———— Suit for confirmation of execution-sale set aside by Collector—*Civil Procedure Code, 1882, s. 312—Onus probandi.*—A suit lies in a Civil Court for confirmation of a sale held in execution of a decree by the Collector under s. 320 of the Civil Procedure Code, and to set aside an order passed by the Collector cancelling the sale. *Madho Prasad* v. *Hansa Kuar, I. L. R., 5 All., 314,* referred to. *Azim-ud-din* v. *Baldeo, I. L. R., 3 All., 654,* followed. In such a suit, where it is pleaded in defence that the property was sold for an inadequate price, it lies on the defendant to show that there has been a material irregularity in publishing or conducting the sale. BANDI BIBI *v.* KALKA [I. L. R., 9 All., 602

335. ———— Sale in execution of decree —*Civil Procedure Code, ss. 311, 313, 320, 322B, 322C, 322D—Transfer of execution to Collector—Application to Civil Court to set aside sale held by Collector on the ground of irregularity.*—*Held* by the Full Bench that an application to set aside, on the ground of material irregularity within the meaning of s. 311 of the Civil Procedure Code, a sale held by the Collector in execution of a decree transferred to him for execution under s. 320 cannot be entertained by a Civil Court. *Madho Prasad* v. *Hansa Kuar, I. L. R., 5 All., 314,* followed. *Nathu Mal* v. *Lachmi Narain, I. L. R., 9 All., 43,* distinguished. *Per* EDGE, C.J.—The intention of the Legislature as expressed in s. 320 and the following sections of the Civil Procedure Code was not to allow any delegation to the Collector of power to adjudicate upon questions of title, but, in other matters, to hand over all the proceedings to the Collector, and to withdraw the matters so handed over from the purview of the Civil Courts to that extent, but not questions of title or the other questions, if in dispute, referred to in s. 322B, 322C, or 322D. KESHABDEO *v.* RADHE PRASAD [I. L. R., 11 All., 94

336. ———— Suit to cancel pottah of Government waste issued by Collector— [illegible]

pottah for the same land subsequently granted to other persons by the Collector who considered that the issue of the plaintiff's pottah was not in accordance with the darkhast rules. *Held* it was competent to a Civil Court to pass a decree declaring the second pottah null and void, and the plaintiff was entitled to such a decree. *Kullana Naik* v. *Ramanuja Chariyar, 4 Mad., 429,* followed. COLLECTOR OF SALEM *v.* RANGAPA [I. L. R., 12 Mad., 404

337. [illegible] **to confi**[illegible] —*Civil* [illegible] *Civil Pr*[illegible] *1888), ss. 30 and 55—Decree transferred to Collector for execution—Right of suit.*—A decree was transferred to the Collector for execution. A sale was held by the Collector under that decree. Subsequently that sale was set aside by the Collector by an order under s. 312 of the Code of Civil Procedure. A person who had been an auction-purchaser at the sale so set aside brought a suit in a Civil Court to have the sale restored and confirmed. *Held* that such a suit would not lie. *Azimuddin* v. *Baldeo, I. L. R., 3 All., 554,* and *Bandi Bibi* v. *Kalka, I. L. R., 9 All., 602,* referred to, and held to be no longer applicable by reason of the changes effected

JURISDICTION OF CIVIL COURT —*continued.*

27. REVENUE COURTS—*continued.*

in the law by Act VII of 1888, but the judgment of OLDFIELD, J, in the former case approved *Madho Prasad* v *Hansa Kuar, I. L. R. 5 All., 314,* referred to. SHIB SINGH v. MUKAT SINGH

[I. L. R., 18 All, 437

338. ——— *Civil Procedure Code (1882) ss. 312 and 320—Act VII of 1888, ss. 40 and 55—Execution of decree—Decree transferred to Collector for execution.*—At a sale of ancestral property held by a Collector executing a decree transferred to him under s. 320 of the Code

SHIAM BEHARI LAL v. RUP KISHORE

[I. L. R., 20 All., 379

339. ——— **Suit for declaration contrary to decision of Revenue Court**—*N.-W. P. Rent Act (XII of 1881), ss. 95 and 96.*—One N was an occupancy tenant. On his death his widow J continued in occupation of the occupancy holding After the death of J, one S, alleging herself to be the daughter of N and J, applied in the Court of revenue to have her name entered in the village papers as occupancy tenant of N's holding in succession to him The zamindars were made parties to this proceeding The Court of revenue decided in

340. ——— **Decision of a Revenue officer**—*Bengal Tenancy Act (VIII of 1885) ss. 107 and 108 Landlord and tenant—Record of rights.*—An order made by a Revenue officer under s 107 of the Bengal Tenancy Act, determining the rent payable for a holding, has the force of a decree, and when not set aside by appeal or otherwise, cannot be questioned in a Civil Court *Joypal Dhobi* v. *Paluidhari Das, 2 C. W. N., 491,* approved RAM AUTAR SINGH v. SANOMAN SINGH

[I. L. R, 27 Calc., 167

See GOKHUL SAHU v. JODU NUNDUN ROY

[I. L. R., 17 Calc., 721

341. ——— **Order of Revenue Court granting sale under certificate**—*Public Demands Recovery Act (Beng. Act VII of 1880), s. 2—Limitation—Suit to set aside sale—Order of*

JURISDICTION OF CIVIL COURT —*continued.*

27. REVENUE COURTS—*concluded.*

Revenue Court setting aside sale.—A sale was held on the 9th September 1893, in execution of a certificate under the Public Demands Recovery Act (Bengal Act VII of 1880). On the 2nd January 189+, an appeal was preferred to the Commissioner under s 2 of Act VII of 1868 for setting aside the sale after the expiry of sixty days prescribed for

Commissioner subsequently set aside the sale without hearing the purchaser. In a suit brought in the

of jurisdiction, and the grounds of the Commissioner's finding on that point could not be discussed in the High Court *Mahomed Hossain* v *Purunder Mahto, I. L. R., 11 Calc., 287,* and *Mungal Pershad Dichit* v. *Grija Kant Lahiri, I. L. R.,*

[I. L. R., 25 Calc., 789

342. — *Bengal* An order s. 40 of

suit lies in the Civil Courts by which its propriety can be questioned. LALLA SALIGRAM SINGH v. RAMGIR . . 3 C. W. N., 311

343. ——— **Suit to set aside sale for arrears of cesses**—*Public Demands Recovery Act (Beng. Act VII of 1880), ss. 2, 8, 10—Beng. Act VII of 1880, ss. 2 and 8.*—A suit to set aside a sale held for arrears of cesses on the ground that no notice of the certificate under s. 10 of Bengal Act VII of 1880 was served upon the plaintiff is maintainable in the Civil Court *Baijnath Sahai* v. *Ramgut Singh, I. L. R., 23 Calc., 775,* and *Saroda Charan Bandopadhya* v. *Kristo Mohun Bhattacharjee, 1 C. W. N., 516.* CHUNDER COOMAR MUKERJEE v. SECRETARY OF STATE FOR INDIA

[I. L. R., 27 Calc., 698
4 C. W. N., 586

JURISDICTION OF CIVIL COURT —*continued.*

28. SANADS.

344. ——— **Suit to cancel or set aside sanad as granted by mistake**—*Summary settlement—Sanad—Revocation of sanad—Garas—Wanta—Mazmun Narva—Bhagdari.*—Where a sanad by way of summary settlement of land revenue has been granted by Government under Bombay Act VII of 1863, Government cannot reform or set it aside without the assent of all parties interested therein. To do so would be an assumption by Government of the function of a Civil Court. A Civil Court cannot, on the ground that Government has by mistake granted such a sanad to a person not the owner of the land, reform or set aside the sanad. S. 7 of Bombay Act VII of 1863 renders the quit-rent fixed by the sanad, binding alike on Government and on the rightful owner of the land, but the latter may recover the land from the grantee of the sanad, subject to the quit-rent fixed by the sanad, and payable to Government, and such grantee will be declared to have taken the sanad as a trustee for the rightful owner. *Quære*—Whether a Civil Court can give relief, either by reforming or cancelling such sanads, against mistakes other than those relating to ownership which may be found to exist in the sanads. DOLSANG BHAYSANG *v.* COLLECTOR OF KAIRA . . . **I. L. R., 4 Bom., 467**

29. SERVICES, PERFORMANCE OF.

345. ——— **Suit to enforce services by barbers**—*Cause of action.*—A suit cannot be maintained in the Civil Courts to enforce the performance of certain services by barbers. RAJKISTO MAJEE *v.* NOBAEE SEAL . . **1 W. R., 351**

30. SOCIETIES.

346. ——— **Suit to enforce admission as member of a society.** A suit will not lie to force the defendants to admit the plaintiff into their society. RADHOO NISSEE *v.* RAM JUNOO NISSEE . . . . **2 Hay, 83**

347. ——— **Suit for declaration of right to be member of a society**—*Exclusion* [illegible]

SUDHARAM PATAR *v.* SUDHARAM
[3 B. L. R., A. C., 91: 11 W. R., 457

348. ——— **Suit on account of exclusion from invitation to dinners.**—Civil Courts cannot compel Hindus, against their will, to ask other Hindus to their houses or their entertainments. JOY CHUNDER SIRDAR *v.* RAMCHURN
[6 W. R., 323

JURISDICTION OF CIVIL COURT —*concluded*

31. STATUTORY POWERS, PERSONS WITH.

349. ——— **Remedy by ordinary suit barred**—*Madras Forest Act (V of 1882), s. 10—Procedure.*—Where by an Act of the Legislature powers are given to any person for a public purpose from which an individual may receive injury, if the mode of redressing the injury is pointed out by the statute, the ordinary jurisdiction of the Civil Courts is ousted, and in the case of injury the party cannot proceed by action. Plaintiff sued in a Munsif's Court to cancel the decision of a forest officer confirmed by a District Judge under s. 10 of the Madras Forest Act, 1882, and to recover certain land, a claim to which had been rejected under the said section. *Held* that the Munsif had no jurisdiction to entertain the suit. RAMACHANDRA *v.* SECRETARY OF STATE FOR INDIA
[I. L. R., 12 Mad., 105

32. SURVEY AWARDS.

350. ——— **Suit to set aside survey award**—*Beng. Reg. IX of 1833, s. 9.*—S. 9 of Regulation IX of 1833 referred only to decisions of punchayets, and did not bar a suit in the Civil Court to set aside an award of survey authorities as null and void. RAJ KISHEN ROY *v.* SURUT CHUNDER CHUCKERBUTTY . . **4 W. R., 73**

IKRAM-OOLLAH *v.* SHEO PERSHAD . **2 Agra, 340**

SIKUNDAR ALI *v.* PURWURUSH ALI
[3 N. W., 132

33. TRESPASS.

351. ——— **Suit to have door closed on account of apprehended trespass.**—*Held* that a suit for the closing of a door on account of apprehended trespass will not lie in the Civil Courts. PARUM SOOKH *v.* SITA RAM **2 Agra, 119**

JURISDICTION OF CRIMINAL COURT.

JURISDICTION OF CRIMINAL COURT —*continued.*

See Appeal in Criminal Cases—Acts.
[I. L. R., 4 Calc., 667
I. L. R., 15 Bom., 505

See Commission—Criminal Cases
[I. L. R., 5 Bom., 338

See Cases under High Court, Jurisdiction of—Criminal.

See Insanity . I. L. R., 2 Calc., 356

See Offence committed on the High Seas . . 1 B. L. R., O. Cr., 1
[7 Bom., Cr., 89
8 Bom., Cr., 63
I. L. R. 14 Bom., 227
I. L. R., 21 Calc., 782

See Supreme Court, Calcutta.
[1 Moore's I. A., 67

1 GENERAL JURISDICTION.

1. ——— Presumption of jurisdiction —*Objection to jurisdiction.*—The High Court being a Court of superior jurisdiction, the want of jurisdiction is not to be presumed, but the contrary. Where the High Court had jurisdiction to try a prisoner for the offence committed, if a charge had been made against him by a person authorized to make that charge, and the prisoner pleaded not guilty,—*Held* that proof need not be given that the officer had authority to send up the charge. Objections to the jurisdiction should be made before pleading to the general issue. Queen *v.* Naradwip Goswami
[1 B. L. R., O. Cr., 15 : 15 W. R., Cr., 71 note
17 W. R., Cr., 36 note

2. ——— Resistance of process of Civil Court.—The resistance of process of a Civil Court is punishable under the Code of Criminal Procedure, by a Court of criminal jurisdiction *In re Chunder Kant Chuckerbutty, 9 W. R., Cr., 63,* overruled. Queen *v.* Bhagat Dafadar
[2 B. L. R., F. B., 21 : 10 W. R. Cr., 43

3. ——— Questions of title—*Construction of documents.*—It is at all times desirable that questions of title should not be tried in Criminal Courts, and more especially where such questions depend on the construction of obscure documents, or fall to be decided in reference to transactions of which at the best but an imperfect record is preserved. Queen *v.* Kishen Pershad 2 N. W., 202

4. ——— Special law, Effect of, on general jurisdiction—*Criminal breach of trust by trustee of temple.*—*Mad. Reg. VII of 1817*—*Act XX of 1863.*—The ordinary criminal law is not excluded by Regulation VII of 1817 or Act XX of 1863. Anonymous Cases . I. L. R., 1 Mad., 55

JURISDICTION OF CRIMINAL COURT —*continued.*

1. GENERAL JURISDICTION—*continued.*

5. ——— Special law, Jurisdiction under, Effect of Criminal Procedure Code on—*Criminal Procedure Code (Act X of 1882), s. 1.*—The jurisdiction conferred by the Code of Criminal Procedure (Act X of 1882) does not affect any special jurisdiction or power conferred by any law in force at the time when the Code came into force. Queen-Empress *v.* Gustadji Barjorji
[I. L. R., 10 Bom., 181

6. ——— Order under Criminal Code by executive officer—*Power of Judicial Courts to question the legality of such order.*—Where an executive officer makes an order or issues a notification under the provisions of the Code of Criminal Procedure, it is not within the province of judicial authority to question the propriety or legality of such order or notification until an attempt is made to enforce the exaction of a penalty against a person committing a breach of such order or notification. It then becomes the duty of the judicial authority to consider whether the order is properly made or not. In the matter of the petition of Surjanarain Dass. Empress *v.* Surjanarain Dass
[I. L. R., 6 Calc., 88

7. ——— Obstruction to right of way —*Erection of building on public way.*—Where a party residing on one side of a public lane encroaches on the lane by building, and narrows the passage at that particular spot, so far as to cause the traffic to pass over a portion of the land of the party residing on the opposite side of the lane, the remedy of the latter is, by recourse to the Criminal Court, to prevent the [illegible]
If he does n[illegible]
the other [illegible]
[11 W. R., 445

8. ——— Suit for closing new road and opening old one.—In a suit for closing a new road opened by the defendants through the land of the plaintiff and for opening an old road, which had been closed by the defendant,—*Held* by Markby, *J.*, that the question of opening or closing a public road belongs to the Criminal Court, and not to the Civil Court. Hira Chand Banerjee *v.* Shama Charan Chatterjee
[3 B. L. R., A. C., 351 : 12 W. R., 275

9. ——— Offence committed on the high seas—*12 & 13 Vict., c. 96—23 & 24 Vict., c. 88.*—An offence committed on the high seas, but within three miles from the coast of British India, as being committed within the territorial limits of British India, is punishable under the provisions of the Penal Code. The ordinary Criminal Courts of the country have jurisdiction over such offences by virtue of 12 & 13 Vict., c. 96, ss. 2 and 3, extended to India by 23 & 24 Vict., c. 88. Where certain inhabitants of the village of Manori in the Thana district sallied out in boats and pulled up and removed a number of fishing stakes lawfully fixed in the sea within three miles from the shore by the villagers of a neighbouring village, it was held that a Magistrate in

JURISDICTION OF CRIMINAL COURT
—*continued.*

1. GENERAL JURISDICTION—*continued.*

the Thana district had jurisdiction over the offenders; and that the Penal Code was the substantive law applicable to the case REG. v. KASHYA RAMA
[8 Bom., Cr., 63

10. ——————— *Conversion of goods at foreign port entrusted to be carried from and to a British Indian port—Stats. 12 & 13 Vict., c. 96, and 23 & 24 Vict., c. 88.*—*B* entrusted with rice at M (a port in British India) for conveyance to C (also a port in British India) took the rice to G, a port in foreign territory, and there sold it He was convicted at M of criminal breach of trust as a carrier under s. 407 of the Penal Code. *Held* that the Sessions Court at M had no jurisdiction to try the offence under the Code of Criminal Procedure *Held* also that no offence was committed on the high seas so as to give the Court jurisdiction under 12 & 13 Vict, c 96, extended by 23 & 24 Vict, c. 88 BAPU DALDI v. QUEEN . I. L. R., 5 Mad., 23

11. ——— Jurisdiction in Tributary Mehals—*Mohurbhunj—British India.*—A British subject residing in Midnapore, in Bengal, was charged before the Maharajah of Mohurbhunj with having committed the offence of defamation in Mo-

that the case should be transferred to Midnapore and tried by the Magistrate of that district, who had the

proceedings were without jurisdiction. *Per* CUNNINGHAM, *J.*—The Tributary Mehals are now, as they were in 1874, a portion of British India, which the Government of India has been pleased to exempt from the ordinary law and jurisdiction of the Courts, and

residents in it, any procedure, and to exercise any other jurisdiction than that created by the law. *Per* PRINSEP, *J.*—The territory of Mohurbhunj is a

mehals are *ultra vires.* HURSEE MAHAPATRO v. DINOBUNDO PATRO
[I. L. R., 7 Calc., 523: 9 C. L. R., 93

12. ——————— *Code of Criminal Procedure (Act X of 1872), s. 70—Foreign Jurisdiction and Extradition Act (XXI of 1879), s. 9—Beng. Regs. XII, XIII, and XIV of 1805.*—The prisoners, residents of the district of Singhbhum, a district in British India, were convicted, under

British India, but seeing that the Tributary Mehals constitute a "district" within the meaning of the

Procedure Code) ought not to be set aside. *Per*

operation there until this exemption has been removed. EMPRESS v. KESHUB MOHAJAN. EMPRESS v. UDIT PRASAD
[I. L. R., 8 Calc., 985: 11 C. L. R., 241

13. ——————— *Criminal Procedure Code (Act X of 1882), s. 182—Local area—Uncertainty as to the situation of the scene of offence.*—When there is an uncertainty as to whether a

14. ——————— *Kheonjur*—

local area in a foreign country, or in other portions of the British Empire to which the Code has no application; and similarly s. 531 only refers to districts, divisions, sub-divisions, and local areas governed by the Code of Criminal Procedure. IN THE MATTER OF BICHITRANUND DASS *v.* BHUGGUT PERI. IN THE MATTER OF BICHITRANUND DASS *v.* DUKHIA JANA [I. L. R., 16 Calc., 667

15. ———— Offence committed in foreign territory—*Criminal Procedure Code, s. 188—Trial without certificate of the Political Agent—Magistrate who is also Political Agent, Jurisdiction of.*—A District Magistrate instituted criminal proceedings in British India against a Native Indian subject of the Queen, in respect of offences under ss. 419, 467, and 114 of the Penal Code, said to have

should be quashed. QUEEN-EMPRESS *v.* KATHAPERUMAL . . I. L. R., 13 Mad., 423

16. ———— Jurisdiction of the British Consular Court at Zanzibar over foreign

... meaning of s. 4, cl. (b), of the Order, was amenable to the jurisdiction of the Consular Court. QUEEN-EMPRESS *v.* REGO MONTOPOULO [I. L. R., 19 Bom., 741

17. ———— Jurisdiction of Consular Court over persons not resident within a

British Protectorate—*Aiding the waging of war against a friendly power—Africa Orders in Council, 1889, 1892, 1893.*—Two natives of a German Protectorate were convicted by the English Consular Court of Uganda of aiding and abetting the King of Unyoro in waging war against the King of Uganda and the Queen-Empress under ss. 48 and 50 of the Africa Order in Council of 1889 as supplemented by the Order of Council of 1892 and 1893. One of them was also convicted of slave-dealing. *Held* that the English Consular Court had no jurisdiction, inasmuch as the accused, even if subjects of a Signatory Power, were not resident, and their offences were not committed, within a British Protectorate. *Held* also that the alleged fact that the "*locus in quo*" was in British military occupation gave no jurisdiction to the Consular Court. QUEEN-EMPRESS *v.* JUMA . I. L. R., 22 Bom., 54

18. ———— Criminal jurisdiction along the railway through Indian Independent

of the Hyderabad State Railway is derived from a grant to that Government in 1887 by His Highness the Nizam as ruler of the territory. The railway lands remain part of his dominions The grant of civil and criminal jurisdiction contained in the correspondence of that year between the Nizam's Minister and the Resident at Hyderabad is expressed to be

(which could
to that grant
arrest on the
of a subject
Magistrate of
of a criminal offence committed in British India, and unconnected with the Hyderabad railway administration. The mere presence of the accused on the railway lands over which criminal jurisdiction had been

2 C. W. N., 1

19. ———— Power of Indian Legislature—*Act XXII of 1869, s. 9—Indian Councils Act—24 & 25 Vict., c. 67, s. 22—24 & 25 Vict.,*

JURISDICTION OF CRIMINAL COURT —*continued.*

1. GENERAL JURISDICTION—*continued.*

was empowered to extend all or any of the provisions of the Act to the Cossyah and Jynteeah Hills. By a notification in the *Calcutta Gazette* of 4th October 1871, the Lieutenant-Governor extended the provisions of the Act to the Cossyah and Jynteeah Hills, and directed that the Commissioner of Assam should exercise the powers of the High Court in the civil and criminal cases triable in the Courts of that district. The two prisoners were tried for murder in April 1870 and were on conviction sentenced by the

questioned had been exercised in many cases for a series of years previous to the passing of the Indian Councils Act, and that Act (the framers of which

High Court has power to question the validity of the Legislative Acts of the Governor General in Council *Per* MACPHERSON, J. (PONTIFEX, J., concurring)—The High Court has no such power if satisfied that the Act is not within any of the prohibitions of the Indian Councils Act EMPRESS v. BURAH

[I. L. R., 3 Calc., 63: 1 C. L. R., 161

Held by the Judicial Committee of the Privy Council that the decision of the majority of the High Court was erroneous and rested on a mistaken view of the powers of the Indian Legislature That ... d by the Act ... it has, when ... ers of legis ... as those of ... s of legisla- ... ether in an Imperial or Provincial Legislature, they may be well exercised either absolutely or conditionally Legislation, conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the Legislature to persons in whom it places confidence, is not uncommon, and in many circumstances may be highly convenient. By the terms of the Act 24 & 25 Vict, c. 104, the exercise of jurisdiction in any part of Her Majesty's Indian territories by the High Courts was meant to be subject to, and not exclusive of, the general legislative power of the Governor General in Council. An exercise of legislative authority by the Governor General in Council, whereby any place or territory is removed from the jurisdiction of the High Courts, is one expressly contemplated by the Stat. 24 & 25 Vict, c. 104, and by the Letters Patent issued under that statute EMPRESS v. BURAH

[I. L. R., 4 Calc., 172: 3 C. L. R., 197
L. R., 5 I. A., 178

20 — —— Trial by jury—*Commissioner of Cooch Behar.*—The Commissioner of Cooch Behar had no power to hold a trial by jury in the Gowalpara district. QUEEN v. BHAGIDHONE KATCHARI

[8 W. R., Cr., 53

QUEEN v. KHOODEERAM . 8 W. R., Cr., 39

2. EUROPEAN BRITISH SUBJECTS.

21. ———— Sessions Court, Bellary—*Treaty by Rajah of Sundoor with Government.*—The Sessions Court of Bellary has no jurisdiction under the Penal Code to try native subjects of the jaghirdar, or Rajah, of Sundoor, for offences committed in the plateau of Ramandoorg upon native inhabitants of the village of Ramandoorg Ramandoorg is a portion of the territory of Sundoor, and the Rajah is in the position of a native chief or ruler A treaty entered into by the late Rajah of Sundoor with the Government of Madras contained the following stipulation "It being probable that, as European officers take up their residence on the said hill, many servants, tradesmen, private persons, and others will reside there, I have relinquished to the Company's Government the police and magisterial functions of maintaining peace, and trying and punishing offences committed by such people, such as violence, petty crimes, thefts, murder, etc. The Collector is to have jurisdiction in such matters" *Held* that this treaty did not give the Sessions Court of Bellary jurisdiction, but it surrendered exclusive criminal jurisdiction over a limited class of persons, namely, Europeans

by such persons. QUEEN v. VENCANNA

[3 Mad., 354

22. ———— Power to legislate for European British subject in mofussil—*Legislature, Power of—Bom. Act VII of 1867 (District Police Act)—3 & 4 Will. IV, c. 123—53 Geo. III, c. 155, s. 105—37 Geo. III, c. 142, s. 10.*—Although the old East India Company had power, under the Charters of Charles II, to make laws affecting

JURISDICTION OF CRIMINAL COURT —*continued.*

2. EUROPEAN BRITISH SUBJECTS—*continued.*

British-born subjects, yet this power ceased in A.D. 1709, when its Charters were surrendered to Queen Anne. From that date down to the passing of the 3 & 4 Will. IV, c. 123 (with the exception of

jects can be found. *Semble*—That neither the East India Company nor any Indian Government (with the like exception) possessed such power from the year 1709 till the passing of the 3 & 4 Will. IV, c. 122. With the exception of offences made punishable by the 53 Geo III, c. 155, s 105, by

mofussil, which jurisdiction is exclusive except in so far as it is limited by Stat. 53 Geo III, c. 155, s. 105, and certain subsequent Acts of the Government of India. REG. v. REAY 7 Bom., Cr., 6

23. ——— Power to try European

mofussil was convicted by a Magistrate under the

power, under 24 & 25 Vict., c. 67, to subject

the Magistrate had jurisdiction to try the case. QUEEN v. MEARES

[14 B. L. R., 106 : 22 W. R., Cr., 54

24. ——— *Criminal Procedure Code, 1882, s. 4, cl. (i), and ss 453 and 454 —Privilege—Waiver—Jurisdiction of High Court over European British subjects in Sind—Bom. Act XII of 1866.*—Where a European British sub-

Indian Penal Code, and sentenced to six months' simple imprisonment At the trial, he waived his right to be tried as a European British subject. *Held* that the accused was not subject to the revisional

powers of a High Court in the present case by virtue of the latter part of s 4, cl. (i), of the Code of Criminal Procedure. QUEEN-EMPRESS v. GRANT

[I. L. R., 12 Bom., 561

25. ——— *Jurisdiction of High Court—Foreign Jurisdiction Act, 1879, Ch. II—European British subjects in Bangalore—Justices of the Peace for Mysore.*—The civil and

JURISDICTION OF CRIMINAL COURT —*continued.*

2. EUROPEAN BRITISH SUBJECTS—*continued.*

26. ———— *Act X of 1872 (Criminal Procedure Code), ss. 74, 83.*—*B*, who was charged before a Magistrate who was competent to enquire into a complaint against a European British subject with an offence triable by him, claimed to be dealt with as a European British subject. *B* did not state the grounds of such claim. The Magistrate did not decide whether *B* was or was not a European British subject but proceeded with the case, dealing with him as if he were not a European British subject, and sentencing him to rigorous imprisonment for one year and to a fine. On appeal by *B*, the High Court remanded the case to the Magistrate in order that he might decide, in the manner directed by s. 83 of the Criminal Procedure Code, whether *B* was or was not a European British subject. The Magistrate having decided that *B* was a European British subject,—*Held* that this being so, and it appearing that the Magistrate had dealt with *B* as other than a European British subject, *B*'s trial was void for want of jurisdiction. EMPRESS v. BERRILL . . I. L. R., 4 All., 141

27. ———— *European British*

Court on a charge of the murder of a comrade.

1825 as to the course to be taken in dealing with European British subjects who have committed

ment was valid QUEEN v. JACKSON
[13 B. L. R., 474: 22 W. R., 20

28. ———— *Mutiny Act, s. 101 —Offence committed by British soldier.*—S. 101

29. ———— *Proof of status—Question of fact.*—Whether or not an accused is a

JURISDICTION OF CRIMINAL COURT —*continued.*

2. EUROPEAN BRITISH SUBJECTS—*continued.*

30. ———— *Proof of status.*—The prisoner pleaded that he was a British-born

Held that the plea to the jurisdiction was not made out QUEEN v. TURNBULL . . 6 Mad., 7

31. ———— *Court of Magis-*

32. ———— *Offence committed within the territories of Native Prince in alliance with Government.*—The defendant, a European British subject, was charged with having committed three offences at Bangalore, punishable under the Penal Code. *Held* that the High Court has the same criminal jurisdiction which the late Supreme Court had, and that, Bangalore being within the territories of the Maharajah of Mysore, a Native

[2] Mad., 444

33. ———— *Madras Police Act (XXIV of 1859), s. 48.*—A European British subject was convicted by the Cantonment Magistrate under s. 48 of the Police Act (Act XXIV of 1859). *Held* that the Magistrate had no jurisdiction. ANONYMOUS CASE . . . 5 Mad., Ap., 25

34. ———— *Judicial Com-*

European British subject in Mysore, being a Christian, is accused of an offence not punishable with death or transportation for life, a commitment to the High Court at Madras would be legal. WARD v. QUEEN
[I. L. R., 5 Mad., 33

35. ———— *Justice of the Peace—Illegal conviction.*—Where a Magistrate, being also a Justice of the Peace, convicted a British-born subject of mischief under s. 426 of the Penal Code, the High Court annulled the conviction and

JURISDICTION OF CRIMINAL COURT —*continued.*

2. EUROPEAN BRITISH SUBJECTS—*concluded.*

[illegible]

36. ———— *Officer invested with special powers—Ss. 30, 34, and 209, Code* [illegible]

[illegible]

3. NATIVE INDIAN SUBJECTS.

37. — — Native Indian subject of Her Majesty—*Criminal Procedure Code (Act X of 1882), s. 188—Offence committed by an alien outside British India—Jurisdiction of Courts in British India to try such an offence*—The accused

[illegible]

he does not appear to have given up his intention of returning to his family residence at Bakrol. The accused was born at Dubhai in the Baroda territory. He was educated partly at Kalol and partly at Baroda. He entered the Revenue Survey Department in the Panch Mahals. His services were lent by the British Government to the State of Cambay. He was charged with taking bribes while serving at Cambay. He was tried and convicted by the first class Magistrate of Ahmedabad within whose jurisdiction he was found and arrested. The Sessions Judge reversed the conviction on the ground that the Magistrate had no jurisdiction to try the accused *Held* that the accused was not a "Native Indian subject of Her Majesty" within the meaning of s. 188 of the Code of Criminal Procedure; and though as a "servant of the Queen" he was subject to punishment under s 4 of the Penal Code, the Magistrate of Ahmedabad, in whose jurisdiction he was "found," had no jurisdiction under that section to try him for an offence committed in a foreign State. *Per* PARSONS, J.—The expression "Native Indian subject of Her Majesty" in s 188 of the Code of Criminal Procedure (Act X of 1882) must be construed strictly, and cannot be held to include "servants of Her Majesty." QUEEN-EMPRESS *v.* NATWARAI . . **I. L. R., 16 Bom., 178**

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT.

(*a*) GENERALLY.

38. ———— Offence begun in one place and completed in another—*Stat. 9 Geo. IV, c. 74, s. 56.*—S. 56 of the Stat. 9 Geo. IV, c. 74 (applying and extending to the British territories in India the provisions then recently made for England with respect to offences committed in two different places or partially committed in one

[illegible]

one jurisdiction. The term "within the limits of the Charter of the said United Company," construed to mean within the limits of the Trading Charter of the East India Company. NGA HOONG *v.* QUEEN **[4 W. R., P. C., 109 : 7 Moore's I. A., 72**

39. ———— Offence committed in British territory, instigated by foreign subject resident in foreign territory—*Criminal Procedure Code, 1872, s. 66.*—Where a foreign subject, resident in foreign territory, instigated the commission of an offence which in consequence was committed in British territory,—*Held* that the instigation not having taken place in any district created by the Code of Criminal Procedure, the instigator was not amenable to the jurisdiction of a British Court established under that Code, s. 66. REG. *v.* PIRTAL . . **10 Bom., 356**

40. ———— Acts done partly within and partly without British territories—*Offence under Penal Code.*—A person who is admittedly a subject of the British Government is liable to be tried by the Courts of this country for acts done by him, whether wholly within or wholly without, or partly within and partly without, the British territories in India, provided they amount to an offence under the Penal Code. QUEEN *v.* AHMEDOOLLAH . . . . **2 W. R., Cr., 60**

(*b*) ABETMENT.

41. ———— Abetment in British India of an offence committed in foreign territory not an offence under the Penal Code—*Abetment of murder—Rioting—Penal Code (Act XLV of 1860), ss. 109, 115, 147, and 302*—[illegible]

[illegible]

[illegible] of murder or of rioting under ss 302 and 147 of the Indian Penal Code The alleged abetment consisted of words spoken in British territory by the accused inciting certain Portuguese subjects to kill one Bhana, if he attempted to remove the

JURISDICTION OF CRIMINAL COURT —*continued.*

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—*continued.*

produce of certain lands situate in the Portuguese territory of Daman. A disturbance afterwards occurred at Daman in connection with this matter, in which one man was killed and another wounded. Thereupon the Governor General of Portuguese India moved the Government of Bombay to bring the accused to justice as the instigator of the murder. The Government of Bombay, being of opinion that s. 188 of the Code of Criminal Procedure (Act X of 1882) was applicable to the case, passed a Resolution in the Political Department directing the District Magistrate to take the necessary action in the matter. The District Magistrate thereupon committed the accused to the Court of Session on a charge of abetment of murder or of rioting. *Held*, quashing the commitment, that the alleged abetment was not an offence punishable under the Indian Penal Code, and that therefore the Sessions Court had no jurisdiction to try the accused. *Held* also that s. 188 of the Code of Criminal Procedure had no application to the present case, the alleged offence of abetment not having been committed outside British India. QUEEN-EMPRESS *v.* GANPATRAO RAMCHANDRA I. L. R., 19 Bom., 105

42. ——— Offence committed out of British India—*Penal Code (Act XLV of 1860), ss. 108A, 372—Disposing of a minor for immoral purposes—Offence not triable except with the certificate of Political Agent or sanction of Government—Criminal Procedure Code (Act V of 1898),*

[illegible]

ment of the offence does not constitute either a principal offence or an attempt or abetment of the same The intention of either of the accused while they were [illegible]

offence, [illegible]

did not [illegible]

EMPRE[illegible]

JURISDICTION OF CRIMINAL COURT —*continued.*

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—*continued.*

(*c*) ABETMENT OF WAGING WAR.

43. ——— Charge of abetment of war [illegible]

Court of Patna, it was held that the Court of Session [illegible]

also, because the prisoner had sent money from Calcutta to Patna by hundis, and until that money reached its destination, the sending continued on the part of the prisoner QUEEN *v.* AMEER KHAN [9 B. L. R., 36; 17 W. R., Cr., 15

(*d*) ADULTERATION.

44. ——— Adulteration of cotton— [illegible]

punishable with fine, and it is immaterial where the adulteration takes place. EMPRESS *v.* KHIMCHAND NARAYAN I. L. R., 3 Bom., 384

(*e*) CRIMINAL BREACH OF CONTRACT.

45. ——— Contract made in foreign territory to be performed in British territory—*Breach—Arrest in foreign territory—Act XIII of 1859.—B*, having contracted in foreign territory to labour for *S* in British territory, broke his contract. He was arrested in foreign territory, [illegible]

46. ——— Breach of contract to labour in foreign territory.—*V*, having received an advance of money from *G*, contracted to labour for him in foreign territory. Having broken the contract, *V* was prosecuted under Act XIII of 1859, ordered to repay, and sentenced to imprisonment in default. *Held* that the order was illegal as having been made without jurisdiction. GREGORY *v.* VADAKASI KANGANI . . . I. L. R., 10 Mad., 21

See SIDDHA *v.* BILIGIRI . I. L. R., 7 Mad., 354

(*f*) CRIMINAL BREACH OF TRUST.

47. ——— Liability of native Indian subjects for offences committed out of British India—*Criminal Procedure Code, 1852,*

JURISDICTION OF CRIMINAL COURT —*continued.*

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—*continued*

s. 188.—The accused were charged under s. 407 of the Indian Penal Code (Act XLV of 1860) with committing criminal breach of trust in respect of certain property entrusted to them as carriers. They were all native Indian subjects of Her Majesty. The offence was alleged to have been committed in Portuguese territory, and they were found in a place in British territory. *Held* that under s 188 of the Criminal Procedure Code (Act X of 1882) the accused could be tried in the place where they were found. QUEEN-EMPRESS *v.* DAYA BHIMA . I. L. R., 13 Bom., 147

which was at Cawnpore, was charged with the offence punishable under s. 408 of the Penal Code. The

the complainant, the Courts at Cawnpore had jurisdiction to inquire into the charge, inasmuch as the consequence of *B*'s acts, namely, loss to the company, occurred in Cawnpore. QUEEN-EMPRESS *v.* O'BRIEN [I. L. R., 19 All., 111

(*g*) DACOITY.

49. ———— Dacoity committed out of British territory—*Concealment of property in British territory—Criminal Procedure Code, 1872, s. 67.*—Where dacoity was committed at Velanpor, a village in the territory of His Highness the Gayakwad, and a part of the stolen property found where it had been concealed by the accused in British territory, it was held that a conviction of dacoity could not be

tion of retaining stolen property, the sentences awarded could, it was held, be sustained, the retaining having taken place in British territory. REG. *v.* LAKHYA GOVIND . . I. L. R., 1 Bom., 50

50. ———— Dacoity committed in British territory—*Criminal Procedure Code, s. 180—Dishonest receipt of stolen property in foreign territory.*—Certain persons, who were not proved to be British subjects, were found in possession, in a native State, of property the subject of a

of offences punishable under s. 412 of the Penal Code. *Held* that no offence was proved to have been committed within the jurisdiction of a British Court. QUEEN-EMPRESS *v.* KIRPAL SINGH [I. L. R., 9 All., 523

(*h*) EMIGRANTS, RECRUITING, UNDER FALSE PRETENCES.

51. ———— Place where false pretences were held out—*Jurisdiction to try recruiters of emigrants under s. 71, Act XIII of 1864.*—Recruiters of emigrants charged under s 71, Act XIII of 1864, must be tried by the Magistrate within whose jurisdiction the holding out of false pretences to the labourers took place. ANONYMOUS [4 Mad., Ap., 4

(*i*) ESCAPE FROM CUSTODY.

52. ———— Place of trial—*District in which escape took place.*—A convict escaping from custody must be tried for that offence in the district within which he escaped. a Magistrate of another district has no jurisdiction to try him for the offence. REG. *v.* DOSSA SERA . . . 1 Bom., 139

(*j*) KIDNAPPING.

53. ———— Offences committed in

district of Bijnor, and possibly the other three persons had committed the offence punishable under s. 368 of the Indian Penal Code in the district of Muzaffarnagar; *C* and *P* also possibly having committed the offence punishable under that section in Bijnor. Under the above circumstances, the High Court, maintaining the order of commitment made by the Joint Magistrate, directed the case to be transferred for trial to the Court for the trial of sessions cases arising in the Bijnor district, namely, that of the Sessions Judge of Moradabad. *Reg.* v. *Samia Kaundan, I. L. R., 1 Mad., 173,* and *Queen-Empress* v. *Surja, Weekly Notes, All. (1883), 164,* not followed. *Queen-Empress* v. *Ingle, I. L. R., 16 Bom., 200,* and *Queen-Empress* v. *Abbi Reddi, I. L. R., 17 Mad., 402,* referred to. *Queen-Empress* v. *Thaku, I. L. R., 8 Bom., 312,* followed. QUEEN-EMPRESS *v.* RAM DEI [I. L. R., 18 All., 350

54. ———— Offence committed outside British territory—*Criminal Procedure Code*

JURISDICTION OF CRIMINAL COURT —*continued.*

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—*continued.*

(1882), s 188—Certificate of Political Agent—Kidnapping.—The absence of the certificate of the Political Agent required by s 188 of the Code of Criminal Procedure is an absolute bar to the trial of a case to which the provisions of that section apply. QUEEN-EMPRESS *v.* RAM SUNDAR

[I. L. R., 19 All., 109

(l) MURDER.

55. ——— Offence committed in Cyprus—*Foreign Jurisdiction and Extradition Act (XI of 1872)* [illegible] *British subj*[illegible] *"Native Sta*[illegible] *General in* [illegible] *death—Division Court Full Court —Held* (STUART, C.J., dissenting) that a Native Indian subject of Her Majesty, being a soldier in Her Majesty's Indian army, who committed a murder in Cyprus, while on service in such army, and who was accused of such offence at Agra, might, under s. 9 of Act XI of 1872, be dealt with in respect of such offence by the Criminal Courts at Agra, Cyprus being a "Native State," in reference to Native Indian subjects of Her Majesty, within the meaning of that Act. *Per* STUART, *C J.*—The power of the Governor General of India in Council to make laws for the trial and punishment in British India of offences committed by British Indian subjects in British territories other than British India discussed. A Division Court of the High Court ordered the Magistrate who had refused to enquire into a charge of murder on the ground that he had no jurisdiction to enquire into such charge, considering that the Magistrate had jurisdiction to make such enquiry The Magistrate enquired into the charge and committed the accused person for trial The Court of Session convicted the accused person on the charge and sentenced him to death. The proceedings of the Court of Session having been referred to the High Court for confirmation of the sentence, the case came before the Full Court. *Held per* STUART, *C.J.*, SPANKIE, *J.*, and OLDFIELD, *J.*, that in determining whether such sentence should be confirmed, the Full Court was not precluded by the order of the Division [illegible]

56. ——— Murder committed in Island of Perim—*Criminal Procedure Code, 1882, s. 7—Law in force at Perim—Aden, Jurisdiction of Court of Political Resident at—Act II of 1864, s. 29—Appeal from sentence of Political* [illegible]

in Her Majesty along with the other Indian territories under that Act, which became law on 2nd September 1858 The Penal Code (Act XLV of 1860) and the Code of Criminal Procedure (Act X of 1882) extend in their entirety to the whole of British India and therefore to the Island of Perim. S 7 of the Criminal Procedure Code (Act X of 1882) gives to the Local Government the power to alter the local limits of sessions divisions, and continues the divisions existing when that Code came into force A notification was issued by the Government of Bombay on the 6th May 1884 under the above section including the Island of Perim within the sessions division or district of Aden, and empowering the officer from time to time commanding the troops stationed at Perim, in virtue of his office, to exercise the powers of a Magistrate of the second class within the island and to commit persons for trial to the Court of Sessions at Aden *Held,* having regard to the language of Act II of 1864, that, for the purposes of s. 7 of the Criminal Procedure Code (Act X of 1882), the Resident's Court at Aden might be considered as a Court of Session, and that the local area to which Act II of 1864 applied was the sessions division which was in existence at the date of the above notification when the limits thereof were altered by the inclusion of the Island of Perim A prisoner charged with having committed murder in the Island of [illegible]

[illegible]

at Aden had no jurisdiction over the Island of Perim, and that the Political Resident at Aden was not a Judge of a Court of Session for that island. Where, therefore, a person charged with having committed murder at Perim was committed by the Magistrate at Perim for trial in the Court of the [illegible]

Resident at Aden, cannot be regarded as part of Aden, and the provisions of the Aden Act II of 1864 are not in force at Perim. Act II of 1864 did

JURISDICTION OF REVENUE COURT
—*continued.*

1. BOMBAY REGULATIONS AND ACTS
—*concluded.*

relates to immediate possession; and under s. 15, the party to whom such immediate possession is given by the Mamlatdar, or whose possession he shall maintain, shall continue in possession until ejected by a decree of a Civil Court. The power reserved to the Revenue Courts by s. 1, cl. 2, of Act XVI of 1838, to determine the facts of possession and dispossession, was so reserved merely for the temporary purpose of enabling those Courts to dispose of the immediate possession, which was to continue until the Civil Court ejected the party put into such immediate possession. The purpose of Act XVI of 1838, as that of Bombay Act V of 1864, was temporary only, and chiefly to provide for the cultivation of the land and to prevent breaches of the peace until the Civil Courts should determine the rights of disputants The decisions of the Revenue and the Mamlatdars' Courts as to possession and dispossession do not bind the Civil Courts, the proceedings in the former Courts being of a summary character. The Civil Courts alone can entertain the question of title. BASAPA BIN MURTIAPA *v.* LAKSHMAPA BIN MARITAMAPA . I. L. R., 1 Bom., 642

2. MADRAS REGULATIONS AND ACTS.

5. ———— **Suit for rent of land**—*Mad Act VIII of 1865—Power of Head Assistant Collector—Act XI of 1865.*—At the date of the enactment of Act XI of 1865, suits for rent of land could not be entertained by the Revenue officers of this presidency, so as to bar the cognizance of suits by the Small Cause Court. Madras Act VIII of 1865, equally with the prior enactments, abstains from authorizing the cognizance by the Revenue authorities of suits for arrears of rent. The cognizance of such a suit by a Head Assistant Collector is a proceeding *coram non judice* GAURI ANONTHA PARATHESE *alias* SATTHAPPAIYAN *v.* KALIAPPA SETTI [3 Mad., 213

6. ———— **Suit for possession of land after wrongful ejectment**—*Mad. Act VIII of 1865, s. 12.*—Plaintiffs sued under s. 12 of Madras Act VIII of 1865, to be reinstated in the possession of certain lands from which they alleged they had been wrongfully ejected by the defendant, a zamindar. Defendant pleaded that the suit was not maintainable as the lands in question formed part of his "panai" lands and were not a part of his zamindari *Held* that the suit was maintainable before the revenue authorities under s. 12, Madras Act VIII of 1865. NAGAYASAMI KAMAYA NAIK *v.* PANDYA TEVAR . . . . 7 Mad., 53

7. ———— **Suit for a pottah**—*Madras Rent Recovery Act (Mad. Act VIII of 1865), ss. 8, 9, 10—Denial of tenancy by landlord—Question of title.*—In a summary suit brought under the Madras Rent Recovery Act to compel the defendant to give a pottah to the plaintiff for certain land which plaintiff claimed to hold from

JURISDICTION OF REVENUE COURT
—*continued.*

2. MADRAS REGULATIONS AND ACTS
—*concluded.*

him, the defendant denied that the plaintiff was his tenant. *Held* that the Collector was bound to try the question so raised, and not to refer the parties to a regular suit for its determination. NARAYANA CHARIAR *v.* RANGA AYYANGAR [I. L. R., 15 Mad., 223

8. ———— [illegible] pottah—[illegible] *Act VIII* [illegible] *by defenda*[illegible] —The plai[illegible] lands attached to a mosque from the four owners thereof. The defendant was a cultivating tenant on the lands, and the plaintiff duly offered the defendant a pottah. The defendant refused to execute [illegible]

The plaintiff thereupon brought a suit to enforce acceptance of a pottah under s 9 of Madras Act VIII of 1865. The Deputy Collector having decided the case in the plaintiff's favour, the defendant [illegible]

existence of a particular legal relation, the intention must be taken to be to authorize it to adjudicate on every matter of fact or of law incidental to such adjudication. *Narayana Chariar* v. *Ranga Ayyangar, I. L. R., 15 Mad., 223,* and *Ayappa* v. *Venkata Krishnamarazu, I. L. R, 15 Mad, 495,* cited and followed. ABDUL RAHIMAN SAHIB *v.* ANNAPILLAI [I. L. R, 17 Mad., 140

3. N.-W. P. RENT AND REVENUE CASES.

9. ———— **Nature of defence**—*Effect of, on jurisdiction of Court.*—The jurisdiction of a Revenue Court under the Rent Act, 1859, was not [illegible]

CHUNDER KOOMAR MUNDUL *v.* BAKER ALI KHAN [9 W. R., 598

10. ———— **Denial of relation of landlord and tenant**—*Issue as to relationship of* [illegible]

JURISDICTION OF REVENUE COURT
—*continued.*

3. N.-W. P. RENT AND REVENUE CASES
—*continued.*

should judicially determine the fact, and take jurisdiction or not according to the result. HUREE PERSAD MALEE *v.* KOONJO BEHARY SHAHA
[W. R., F. B., 29: 1 Ind. Jur., O. S., 20 Marsh., 99: 1 Hay, 238

KALLEE SINGH *v.* MOOBLEE RAM . 1 W. R., 135

SANDES *v.* SUROOP CHUNDER BISWAS
[2 W. R., Act X, 11

NUSEEUN BEBEE *v.* WATSON . 3 W. R., 215

POORNO DOSS *v.* OOJOODHIAPROSAD
[3 W. R., Act X, 16

11. ——— Questions of title—*Jurisdiction of Civil Court.*—It is not the province of a Revenue Court to decide questions of title between contending claimants, such questions being within the province of the Civil Courts. JUGUT SHOBHUN CHUNDER *alias* DOOLAL CHUNDER. DEHINGUR GOSSAMEY *v.* BINAUD CHUNDER *alias* SODA SHOBHUN CHUNDER DEHINGUR GOSSAMEY
[I. L. R., 9 Calc., 925

12. ——— *Boundary question.*—The Revenue Courts have no jurisdiction to decide a boundary question between two estates. A landlord must first obtain a declaration in the Civil [illegible]

RUGHOONATH SAHOY *v.* BOONDIE MUNDIR
[1 W. R., 36

13. ——— *Plea of proprietary title.*—*Held* that where a proprietary title is pleaded in respect to land whereof rent is claimed, it can be adjudicated upon by the revenue author[illegible]

14. ——— *Question of title incidentally raised*—*Suit for rent.*—In cases in which the determination of title is incidental to the decision of suits properly brought in the Revenue Court, that Court is bound to enquire into the title. Where a person ostensibly in possession as proprietor institutes a suit for rent, and the alleged tenant pleads that he is in possession as a proprietor, the Revenue Court is bound to raise and decide the issue respecting title. RAMGUT SINGH *v.* RAM SARUN SINGH . . . . 3 N. W., 141

15. ——— Set-off—Suit for rent.—A Court of Revenue cannot entertain a claim to a set-off unless such claim, if made the subject of a suit, would fall within its jurisdiction. *Held* that in a suit in a Court of Revenue by a lumbardar to recover rent, the defendant was not competent to plead as a set-off that certain arrears of malikana were due to him by the plaintiff. BENI MADHO *v.* GAYA PRASAD
[I. L. R., 15 All., 404

16. ——— Landlord and tenant—*N.-W. P. Rent Act (XVIII of 1873), s. 4*—*Determination of status of tenant*—*Order for ejectment.*—In a suit for a declaration that the defendant holds an estate paying revenue to Government as a manager, subject to ejectment at will, and for ejectment, if the relationship of landholder and tenant between the parties be established, then the Revenue Court only can make an order for the defendant's ejectment, or for determining the nature and class of his tenure, that is to say, whether he is a tenant at fixed rates within the meaning of s. 4 of Act XVIII of 1873, or an ex-proprietary tenant, or an occupancy-tenant, or a tenant without a right of occupancy. MUHAMMAD ABU JOFAR *v.* WALI MUHAMMAD
[I. L. R, 3 All., 81

17. ——— Status of cultivator—*Suit for enhancement*—*Plea that defendant is proprietor*—*Act X of 1859, s. 153.*—The Revenue Court has jurisdiction to try the question whether the defendant in a suit for enhancement of rent, though recorded as cultivator, was on the footing of a proprietor, and had held the land on payment of revenue rate, there being nothing in the law to bar the adjudication of such a plea. KAISRUR *v.* PUT RAM
[2 Agra, Pt. II, 212

18. [illegible]

[2 Agra, 241

19. ——— Suit to make up deficiency of sir land—*Suit for partition and separation of share.*—*Held* that a suit to make up the deficiency of sir land of one patti with another patti of a joint undivided estate was not cognizable by the Civil Court, the remedy of the plaintiff being by a revenue suit for partition and separation of his share. GOLAM GHOUS *v.* FUREED ALUM . 1 Agra, 246

20. ——— Suit for ejectment and for mesne profits against tenant—*Jurisdiction of Civil Court.*—If a landholder desires to eject a tenant, holding only for a limited period, after the determination of his tenancy [illegible] claim for ouster does not give the Civil Court jurisdiction in such cases. RAM AUTAR RAI *v.* TALIMUNDI KUAR . . . . 7 N. W., 49

21. ——— Suit to determine rate of rent—*Application*—*Ex-proprietary tenant.*—A Revenue Court cannot entertain a suit to determine the rate of rent payable by an ex-proprietary tenant,

JURISDICTION OF REVENUE COURT —*concluded.*

3. N.-W. P. RENT AND REVENUE CASES —*concluded.*

before such transfer, the plaintiff claiming as lambardar and as heir to the deceased lambardar during whose incumbency such arrears became due, was cognizable in the Revenue Courts. The principle laid down in *Bhikhan Khan* v. *Ratan Kuar, I. L. R., 1 All., 512*, followed. WAZIR MUHAMMAD KHAN *v.* GAURI DAT . . . I. L. R., 4 All., 412

43. ——— *N.-W. P. Rent Act (XII of 1881), ss. 93 (g), 205—"Proprietor"—"Co-sharer."*—Where a lambardar brought a suit for arrears of land revenue payable by the proprietors against several defendants of whom some were co-sharers and others mortgagees in possession,—*Held* that such suit was one of the nature contemplate[illegible]
and [illegible]
all tl[illegible]

to a suit by the lessee of an occupancy-tenant to recover possession of the land under the lease from which the lessor has ejected him, and such a suit is exclusively cognizable by the Revenue Courts *Muhammad Zaki* v. *Hazrat Khan, Weekly Notes, All., 1882, p. 61,* and *Ribban* v. *Partab Singh, I. L. R., 6 All., 81,* distinguished. CHHIDDU *v.* NARPAT . . . . I. L. R., 8 All., 62

4. OUDE RENT AND REVENUE CASES.

45. ——— Liability of lessees in the position of under-proprietors not entitled to sub-settlement—*Oude Rent Act (XIX of 1868), ss. 41 and 83, cl. (4)—Oude Sub-Settlement Act (XXVI of 1886)—Oude Land Revenue Act (XVII of 1876), s. 158.*—A decree, in 1869, of a Settlement Court, upon the compromise of a claim made by village co-parcenary occupiers, to an order for sub-settlement as against the talukhdar, declared the claimants to be entitled to a heritable, but not transferable, lease of the village, at a rent, leaving twelve per cent. profit to the lessees. For default in payment of rent this lease was decreed to be in future liable to cancellation "by the decree of any competent Court, according to any law which may be in force in Oude with respect to persons holding an under-proprietary right in land." Afterwards, in 1879, the parties agreed that the lessees might be dispossessed for non-payment of rent. Default occurred, decrees for arrears were made in [illegible]

[illegible]

1868), either by virtue of the decree or of the subsequent agreement. MADHO SINGH *v.* AJUDHIYA SINGH . . . . I. L. R., 15 Calc., 515
[L. R., 15 I. A., 77

JURY.

See CASES UNDER VERDICT OF JURY.

——— Trial by—

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE 6 Bom., Cr., 47
[I. L. R., 21 Calc., 955

See JUDGMENT—CRIMINAL CASES.
[23 W. R., Cr., 32

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.
[8 W. R., Cr., 39, 53

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.
[I. L. R., 9 All., 420

——— Trial of case properly triable with Assessors by—

See ASSESSORS . I. L. R., 3 Calc., 765

1. CIVIL CASES.

1. ——— Trial of civil cases by jury —*Illegal procedure.*—The Civil Procedure Code nowhere empowers a Judge to try a case with the aid of a jury. DOONGUR RAI *v.* DOORGA RAI
[2 N. W., 97

See MODY *v.* QUEEN INSURANCE CO.
[I. L. R., 25 Bom., 332
4 C. W. N., 781

2 JURY UNDER HIGH COURTS' CRIMINAL PROCEDURE.

2. ——— Special jury—*Power of Clerk of Crown—Drawing up list of special jurors.*—The drawing up of the list of special jurors is entirely in the discretion of the Clerk of the Crown, and the Court will not interfere. IN THE MATTER OF SHAMCHUND MITTER . 1 Ind. Jur., N. S., 106

3. ——— Ballot for selection of jury—*High Courts' Criminal Procedure—Criminal Procedure Code, 1882, ss. 274, 276 (Act X of 1875, s. 33)—Constitution of jury—Balloting.*—Act X of 1875, s. 33, contemplates that the names of the jury to be "chosen by lot" shall all be drawn out of one box containing the names of all persons summoned to act as jurors. REG. *v.* VITHALDAS PRANJIVANDAS . . I. L. R., 1 Bom., 462

4 [illegible]

JURY—*continued.*

2. JURY UNDER HIGH COURTS' CRIMINAL PROCEDURE—*concluded.*

Courts' Criminal Procedure Act, to be tried by a jury of which at least five persons shall not be Europeans or Americans. REG. v. LALUBHAI GOPALDAS [I. L. R., 1 Bom., 232

5. ——— Separation of jury—*Discretion of Judge—Trials for felony and for misde-* ...

being generally done, and after the Code came into operation the practice continued the same, as well in the Supreme Court as subsequently in the High Court, the Judges applying the rule by determining whether the offence under trial would by the old law have been felony or a misdemeanour REG. v. DAYAL JAIRAJ . . . . . 3 Bom., Cr., 20

3. JURY IN SESSIONS CASES.

6. ——— Qualification of juror—*Selection of jury*—In forming a jury a Sessions Judge should endeavour to obtain persons of an independent position in life, and men of judgment and experience. QUEEN v. RAM DUTT CHOWDHRY [23 W. R., Cr., 35

7. ——— *Clerk in office of* ...

EMPRESS v. ROCHIA MOHATO [I. L. R., 7 Calc., 42: 8 C. L. R., 273

8. ——— Objection to juror—*Criminal Procedure Code, 1861, s. 344, cl. (3).*—The allowing of an objection to a juror coming within the third clause of s. 344 of the Code of Criminal Procedure is in the discretion of the Court; and although the Judge is not bound to admit the objection, yet he should not treat it as frivolous QUEEN v. KRISNO CHURN . . . . 16 W. R., Cr., 66

9. ——— Swearing Jury—*Necessity to swear jurors.*—*Held* that it was not necessary in a trial by jury before a Court of Session under the provisions of the Code of Criminal Procedure that the jurors should be sworn. REG. v. LAKSHUMAN RAM CHUNDRA . . . . 3 Bom., Cr., 56

10. ——— Omission to swear jury in sessions case.—*Quære*—If the jury in a sessions case are not sworn, is the omission one which would be covered by s. 13 of the Oaths Act, 1873? QUEEN v. RAMSODOY CHUCKERBUTTY [20 W. R., Cr., 19

11. ——— Withdrawal of case from jury—*Improper acquittal.*—In a case in which the prisoner was charged with murder, and he made

JURY—*continued.*

3. JURY IN SESSIONS CASES—*continued.*

a confession that he did strike the deceased with a stick, the Sessions Judge, after considering the evidence, discredited the confession and all the evidence except that of the medical officer and dis- ...

12. ——— Trial by jury or assessors—*Deputy Commissioner of non-regulation provinces*—*Held*, with reference to the provisions of ss 445A and 445B of Act VIII of 1869, that the chief ...

RAM DASS . . . . 10 W. R., Cr., 60

13. ——— Irregularity in trial—*Offence under s. 91, Registration Act, 1866.*—An offence under s. 91 of the Registration Act ought not to be tried with the assistance of a jury. Where, however, such offence was tried with the assistance of ...

14. ——— *Case tried by jury to which trial by jury had not been extended—Invalidity—Appeal.*—Where a case to which Government had not extended trial by jury was tried by jury, the trial was not considered invalid on that ground; but the Judge's charge was treated as his judgment in the case, and the prisoner's appeal was heard on the facts. QUEEN v. DOORGA CHURN SHOME . . . . 24 W. R., Cr., 30

15. ——— ...

16. ——— Trial of charges partly triable by assessors—*Power of Judge in dealing with verdict—Criminal Procedure Code, 1872, s. 233, Expl.*—In a trial by a jury before a Court of Sessions upon charges some of which were triable by a jury, and some with the aid of assessors, the jury, by a majority of four to one, returned a verdict of "not guilty" on all the charges. *Held* that it was not competent to the Judge, who disagreed with the ...

JURY—*continued.*

3. JURY IN SESSIONS CASES—*continued.*

in such a case, to have accepted the verdict as one of acquittal, and then to have passed orders in accordance with s. 263 of the Code of Criminal Procedure. Explanation to s. 233 of the Code of Criminal Procedure discussed. IN THE MATTER OF BHOOTH NATH DEY . . . . . 4 C. L. R., 405

17. ———— Trial by jury of an offence triable with assessors—*Criminal Procedure Code (Act X of 1882), ss. 306, 307, 536* —The accused was tried by a jury for an offence triable with the aid of assessors, and the jury by a majority found him "not guilty." The Sessions Judge, who disagreed with the verdict, convicted the accused, treating the verdict of the jury as the opinion of assessors *Held* that the conviction was bad, inasmuch as the case was validly "tried by a jury" within the meaning of s. 536 of the Criminal Procedure Code (Act X of 1882), and the trial was complete when the jury had returned their verdict; and that the Judge was bound, under the circumstances, either to give judgment in accordance with the verdict or, if he disagreed with it, to submit the case for orders of the High Court, as provided by ss. 306 and 307 of the Code. *In the matter of Bhooth Nath Dey, 4 C L R., 405,* followed. SURJA KURMI v QUEEN-EMPRESS . . . I. L. R, 25 Calc., 555

See QUEEN-EMPRESS v. JEYRAM HARIBHAI [I. L. R, 23 Bom., 696

18. ———— Order directing trial by jury—*Criminal Procedure Code, 1898, ss. 269 (1), 536 (2)—"Particular class of offences"—Revocation of order—Jury case tried by assessors—Omission to take objection before finding recorded—Validity of trial.*—By s. 269 of the Code of Criminal Procedure the local Government may, with the [illegible]

district, and may, with the like sanction, revoke or alter such order. In the Fort St. George Gazette, [illegible]

anti-Shanar disturbances had taken place in the dis- [illegible]

s. 269 of the Code of Criminal Procedure, that the said previous orders be revoked as regards the persons referred to, and that such persons should be tried with the aid of assessors and not by jury. Certain persons having been so tried for offences under ss. 148, 454, 295, and 324 of the Indian Penal Code, one assessor gave it as his opinion that none of them were guilty the other assessor finding some of them not guilty. The Additional Sessions Judge convicted and sentenced all the accused, whereupon the objection was taken, on appeal, in the High Court, that the trial should have been by jury and not with [illegible]

ral in Council, to revoke the previous notification so far as it related to that class. QUEEN-EMPRESS v. GANAPATHI VANNIANAR . I. L. R., 23 Mad., 632

4. JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE.

19. ———— Appointment of jury—*Cri-* [illegible]

PRESSING COMPANY . . 21 W. R., Cr., 43

20. ———— *Jury improperly constituted—Criminal Procedure Code, 1861, s. 310.* —A jury appointed under s. 310 is not properly constituted when only the foreman is appointed by the Magistrate and the rest of the members by the parties. QUEEN v. HARGOBIND PAL [7 B. L. R., Ap., 57

S. C. DINO NATH CHUCKERBUTTY v. HURGOBIND PAL . . . . . 16 W. R., Cr., 23

21. ———— *Order for removal of obstruction in public way—Jury appointed to consider reasonableness of order* [illegible]

[illegible]

[I. L. R., 18 All., 158

22. ———— *Criminal Procedure Code (Act V of 1898), s. 138—Use of dis-* [illegible]

JURY—*continued.*

4. JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE—*continued.*

nominees of the parties KAILASH CHUNDER SEN *v.* RAM LALL MITTRA . I. L. R., 26 Calc., 869

23. ———— *Constitution of jury—Criminal Procedure Code (1882), ss. 133 to 138—Nomination of jury by Magistrate.*—In the nomination of those members of the jury, the nomination of whom devolves upon the Magistrate under the provisions of s 138 of the Criminal Procedure Code, it is his duty to exercise his own independent discretion, and not merely to accept persons who may be put forward by the party opposed to the applicant A jury constituted in violation of the provisions of s. 138 is not legally constituted, and is incapable of making a legally binding award. *Dino Nath Chuckerbutty v Hur Gobind Pal, 16 W R, Cr, 23*, and *Shaiyanundo Ghosal v Camperdown Pressing Co., 21 W. R., Cr., 43*, followed. UPENDRA NATH BHUTTACHARJEE *v.* KHITISH CHANDRA BHUTTACHARJEE . . . I. L. R., 23 Calc., 499

24. ———— *Jury improperly constituted—Criminal Procedure Code, 1872, s. 523.*—In a case in which a party on whom an order had been made for abatement of nuisance applied under s. 523, Criminal Procedure Code, 1872, for the appointment of a jury, the Magistrate appointed the complainant and two of his witnesses to be, the former a foreman, and the latter two of the members of the jury. *Held* that the jury so constituted by the Magistrate was not a proper tribunal under s 523, Criminal Procedure Code, and the proceedings, etc, were accordingly set aside, and the Magistrate directed to appoint a fresh jury BRINDABUN DUTT *v.* DWARKANATH SEIN . 22 W. R., Cr, 47

25. ———— Juror refusing to act—*Criminal Procedure Code (Act X of 1882), ss. 133, 138, 139—Jury illegally constituted.*—One out of five jurors appointed under s 138, Act X of 1882, declined to act on the jury. Two out of the remainder of the jury were in favour of a temporary order under s. 133 being maintained, whilst the other two were against its being so maintained. The Deputy [illegible]

CHURN MUNDLE *v.* JOSHEIN SHEIKH
I. L. R., 11 Calc., 84

26. ———— Appointment of second jury—*Criminal Procedure Code, 1872, s. 523.*—Where a jury appointed by a Magistrate under s. 523, Criminal Procedure Code, had fully entertained and considered the matter submitted to it, and the individual members of the jury had given in their [illegible]

which had been given in before he made his final order in the matter. NOZUMUDDY *v.* HASIM KHAN [21 W. R., Cr., 54

27. ———— Question for jury—*Criminal Procedure Code, 1872, s. 523—Procedure.*—In a case in which a Magistrate ordered a person either to [illegible]

MOZUMDAR . . . . [illegible] W. R., Cr., 54

28. ———— Fixing time for award of jury—*Criminal Procedure Code, 1861, s. 310.*— [illegible]

changed and a fresh juror is appointed. Where this is not done, a Magistrate cannot carry out his original order if there is any delay in the submission of the award by the arbitrators. IN THE MATTER OF SHAMA KANT BUNDOPADHYA . 14 W. R., Cr., 69

29 ———— Award delivered after time fixed, Effect of—*Criminal Procedure Code (Act VIII of 1869), s. 310—Act X of 1872, s. 523.*—A Magistrate cannot receive and enforce the award of a jury under s 310 of the Criminal Procedure Code, delivered long after the day fixed for the purpose. QUEEN *v.* HARGOBIND PAL . 7 B. L. R., Ap., 57

S. C. DINONATH CHUCKERBUTTY *v.* HURGOBIND PAL . . . 16 W. R., Cr., 23

30 ———— Decision of jury, Effect of—*Finality of decision so far as Magistrate is concerned.*—Where a jury is appointed under s. 310 of the Code of Criminal Procedure to try whether an order passed by a Magistrate for the removal of [illegible]

31. ———— *Criminal Procedure Code (1882), ss 133, 135—Order of Magistrate for removal of unlawful obstruction—Application for appointment of a jury.*—Where a person against whom an order has been made under s. 133 of the Code of Criminal Procedure applies for a jury under s 135 of the Code, the applicant is bound [illegible]

[I. L. R., 22 All., 267

JURY—*concluded.*

4. JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE—*concluded.*

32. ———— **Report of majority of jury**—*Criminal Procedure Code, 1872, s. 523—Duty of Magistrate.*—Where, under s. 523 of the Criminal Procedure Code, a Magistrate receives the report of a jury, he is bound to act according to the recommendation of the majority. When a number of jurors do not agree with one another in every respect, but all agree that a certain order passed by a Magistrate, taken as a whole, is not necessary, such jurors should be counted together as objecting to the order. QUEEN *v.* NAKORI PAROEE . **25 W. R., Cr., 31**

33. ———— *Criminal Procedure Code, s. 133—Public way—Nuisance—Removal of obstruction—Refusal of minority of* [illegible] majority. IN THE MATTER OF DURGA CHARAN DAS *v.* SASHI BHUSAN GUHO . **I. L. R., 13 Calc., 275**

34. ———— [illegible]

JUS TERTII.

See CONTRACT—BREACH OF CONTRACT.
[8 B. L. R., 581

See ESCHEAT . **1 B. L. R., P. C., 44**

JUSTICE, EQUITY, AND GOOD CONSCIENCE, DOCTRINE OF—

See BURMA COURTS ACT, 1889, s. 4.
[I. L. R., 26 Calc., 1

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See COMPANY—WINDING UP—COSTS AND CLAIMS ON ASSETS **I. L. R., 16 All., 53**

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See HIGH COURT, JURISDICTION OF—MADRAS—CRIMINAL.
[I. L. R., 12 Mad., 39

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[7 Bom., Cr., 1
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JUSTICES, SUIT AGAINST—

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KABULIAT.

See CASES UNDER LEASE.

See SPECIFIC PERFORMANCE—SPECIAL CASES . . **I. L. R., 3 Calc., 464**

———— Suit for—

See CASES UNDER CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO JOINT PROPERTY—KABULIATS.

1. FORM OF KABULIAT.

1. ———— **Date for commencement of kabuliat**—*Discretion of Court—Suit for kabuliat without specifying date.*—Where a plaint asks for a kabuliat for a given term, without specifying the date from which the term is to commence, it is in the discretion of the Court to fix the proper term. POORNO CHUNDER ROY *v.* STALKART
[10 W. R., 362

See GHOLAM MAHOMED *v.* ASMUT ALI KHAN CHOWDHRY . . **B. L. R., Sup. Vol., 974**

2. ———— **Omission of specification of boundaries in kabuliat**—*Act X of 1859, s. 2.*—The want of specification of boundaries in a kabuliat is no ground for dismissing a suit for a kabuliat, when all the particulars of area are given as required by s 2 of Act X of 1859. RAMNATH RAKHIT *v.* CHAND HARI BHUYA
[6 B. L. R., 356: 14 W. R., 432

2. IN RESPECT OF WHAT SUIT LIES.

3. ———— **Suit for kabuliat for portion of land**—*Land included in an entire holding.*—A suit for a kabuliat will not lie for a portion only of the land included in an entire holding. RAM DOSS BHUTTACHARJEE *v.* RAMJEEDUN PODDAR
[6 W. R., Act X, 103

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4. ———— *Land held under istemrari tenures.*—A landlord cannot sue for a kabuliat in respect of a portion of the land held under an istemrari pottah. DOORGAKANT MOZOOMDAR *v.* BISHESHUR DUTT CHOWDHRY
[W. R., 1864, Act X, 44

5. ———— *Proprietor of fractional share in estate.*—The question was referred to a Full Bench "whether a suit by the owner of a fractional share of an undivided estate for a kabuliat

KABULIAT—*continued.*

2. IN RESPECT OF WHAT SUIT LIES —*concluded.*

will lie." NORMAN, J., was of opinion that, as a general rule, the holder of a tenure cannot be sued by

[illegible]

did not answer the question on the ground that it did not arise in the suit. INDAR CHANDRA DUGAR v. BRINDABUN BHARA

[8 B. L. R., 251: 15 W. R., F. B., 21

6. ——— *Uncultivated lands brought into cultivation.*—A separate kabuliat cannot be claimed for uncultivated lands already comprised in a lease on the ground that such uncultivated lands have since been brought into cultivation MAHOMED KALOO CHOWDHRY v. FEDAYE SHIKDAR

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7. ——— Right of fishery.—A suit for a kabuliat will not lie for a right to fish in certain waters. MOHUN GOBIND SEIN v. NITTAYE HALDAR

[6 W. R., Act X, 101

8. ——— Suit for etmami kabuliat—*Jurisdiction.*—A suit by a proprietor of land for an etmami kabuliat from his tenants at the prevailing rates is cognizable only under the Rent Act NUSSURUT ALI CHOWDHRY v. MAHOMED KANOO SIKDAR

[11 W. R., 541

9. ——— Land occupied by buildings—*Jurisdiction—Building used as dwelling-house, manufactory, or shop.*—Where the land in respect of which a kabuliat is demanded is occupied by a

[illegible]

PANDOO v. INNAYUT ALI

[3 Agra, 49: S. C. Agra, F. B., Ed. 1874, 131

10. ——— Suit by mutwalli to obtain kabuliat from khadim—*Jurisdiction.*—A suit by the mutwali of a mosque to obtain a kabuliat from a khadim, or subordinate servant attached to the mosque, will not lie under the Rent Act. HIDDUT ALI v. KODEEMALLA MEEAJEE

[6 W. R., Act X, 9

11. ——— Suit to set aside Collector's

[illegible]

KABULIAT—*continued.*

3. RIGHT TO SUE.

12. ——— [illegible]

[illegible]

[? W. R., 2

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[10 W. R., 407

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[1 N. W., 78: Ed. 1873, 131

MUHESH DUTT PANDEY v. SEETUL SONAR

[1 N. W., Ed. 1873, 146

13. ——— *Agreement fixing rent—Raiyat without right of occupancy—Agreement fixing rent.*—A landlord can sue a raiyat not having a right of occupancy for a kabuliat only when an agreement fixing the rent has been entered into. AHMED REZA v. AGHORI . 2 B. L. R., S. N., 15

14. ——— *Allegation of* [illegible] Whether a suit for a kabuliat on

[illegible]

15. ——— *Proof of right to assess as tenant.*—Until the right to assess has been properly determined, a suit for a kabuliat will not lie under Act X of 1859 RAMNATH SINGH v. HURO LALL PANDEY . . 8 W. R., 188

16. ——— *Proof of right to rent—Decree declaring liability to assessment.*—Where the tenure of a defendant is declared liable to assessment in a suit passed between him and the plaintiff's vendor, the plaintiff can sue for a kabuliat, as he is thereby only carrying out the provisions of the decree obtained in that suit. MODHOOSOODUN CHOWDHRY v. RAM MOHUN GHUR . 8 W. R., 473

17. ——— *Suit for resumption—Land claimed to be lakhiraj—Obligation of landlord to sue for resumption.*—A landlord is not bound to sue for resumption before bringing a suit for a kabuliat in respect of lands which the defendant claims to hold as lakhiraj. FUZLON v. ABDULLAH

[7 W. R., 169

18. ——— Proof of [illegible]

[illegible]

JURY—*concluded.*

4. JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE—*concluded.*

not agree with one another in every respect, but all agree that a certain order passed by a Magistrate, taken as a whole, is not necessary, such jurors should be counted together as objecting to the order. QUEEN *v.* NAKORI PAROEE . 25 W. R., Cr., 31

33. ——— *Criminal Procedure Code, s. 133—Public way—Nuisance—Removal of obstruction—Refusal of minority of jury to act.*—When a minority of a jury appointed under the provisions of s. 133 of the Criminal Procedure Code do not act, the Magistrate cannot proceed under that section upon a report submitted by the majority. IN THE MATTER OF DURGA CHARAN DAS *v.* SASHI BHUSAN GUHO . I. L. R., 13 Calc., 275

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KABULIAT—*continued.*

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respect of the entire holding, not excluding the land on which the building is erected The principle of this decision will apply equally to suits brought to obtain payment of perjout as rent. CHOTUCK PANDOO *v.* INNAYUT ALI

[3 Agra, 49: S C. Agra, F. B., Ed. 1874, 131

10. ——— Suit by mutwalli to obtain kabuliat from khadim—*Jurisdiction.*—A suit by the mutwali of a mosque to obtain a kabuliat from a khadim, or subordinate servant attached to the mosque, will not lie under the Rent Act. HIDDUT ALI *v.* KOBEEMALLA MEEAJEE

[6 W. R., Act X, 9

11. ——— Suit to set aside Collector's

KABULIAT—*continued.*

3. RIGHT TO SUE.

12. ——— Requisites for maintenance

[7 W. R., 2

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13. ——————— *Agreement fixing rent—Raiyat without right of occupancy—Agreement fixing rent.*—A landlord can sue a raiyat not having a right of occupancy for a kabuliat only when an agreement fixing the rent has been entered into. AHMED REZA *v.* AGHORI . 2 B. L. R., S. N., 15

14. ——————— *Allegation of tenancy.—Quære*—Whether a suit for a kabuliat on an allegation that the defendant is holding a specific quantity of land under the plaintiff will lie. YAKOOB ALI *v.* KAEMOOLLAH . . . 8 W. R., 329

15. ——————— *Proof of right to assess as tenant.*—Until the right to assess has been properly determined, a suit for a kabuliat will not lie under Act X of 1859 RAMNATH SINGH *v.* HURO LALL PANDEY . . . 8 W. R., 188

16. ——————— *Proof of right to rent—Decree declaring liability to assessment.*—Where the tenure of a defendant is declared liable to assessment in a suit passed between him and the plaintiff's vendor, the plaintiff can sue for a kabuliat, as he is thereby only carrying out the provisions of the decree obtained in that suit. MODHOOSOODUN CHOWDHRY *v.* RAM MOHUN GHUR . 8 W. R., 473

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[7 W. R., [illegible]

18. ——————— *Proof of right* [illegible]

KABULIAT—*continued.*

3. RIGHT TO SUE—*concluded.*

19. ——————— *Proof of right to rent—Trespasser—Decree in summary suit for possession.*—A zamindar cannot compel a trespasser on his land to become his raiyat and execute a kabuliat in his favour, and the fact that the zamindar has obtained a summary decree under s. 15, Act XIV of 1859, against a person, does not entitle him to treat such person either as a trespasser or a raiyat on his land. HEMALEE *v.* KUMLA KANT BANERJEE

[16 W. R., 133

4. REQUISITE PRELIMINARIES TO SUIT.

20. ——— Notice of enhancement.—A suit for a kabuliat at an enhanced rate, to take effect prospectively from the date of suit, may be instituted without any preliminary notice of enhancement, and at any time during the tenancy. BRAE *v.* KUMUL SHAHA . . 4 W. R., Act X, 5

21. ——————— *Landlord and tenant.*—*Held per* STEER, KEMP, and SETON-KARR, *JJ.*, that, under Act X of 1859, a landlord can sue his tenant for a kabuliat fixing the amount of rent, without having served upon him notice of enhancement. *Per* NORMAN, *J.*—Such notice was necessary, and by s. 9 of Act X of 1859 the landlord must, before suing for a kabuliat, tender a pottah to the tenant. *Per* PEACOCK, *C.J.*—The question did not arise in the case. The relationship of landlord and tenant did not exist between the parties. RAM KANTH CHOWDHRY *v.* BHUBUN MOHUN BISWAS

[B. L. R., Sup. Vol., 25: W. R., F. B., 183

WOOLFUT HOSSEIN *v.* JUMOONA DASS

[W. R., 1864, Act X, 60

DOORGA PERSHAD DOSS *v.* KALEE KINKUR ROY

[5 W. R., Act X, 88

22. ——————— *Act X of 1859, ss. 9 and 13.*—*Held*, by the majority of a Full Bench, a landlord can sue for a kabuliat at an enhanced rate without first having given notice of enhancement under s. 13, Act X of 1859. He can also sue without having first tendered a pottah. *Per* PEACOCK, *C.J.*—He can sue if he has given notice of enhancement. *Per* NORMAN, *J.*—A suit for a kabuliat is not maintainable except in cases provided for by s. 9, Act X of 1859. THAKOORANEE DASSEE *v.* BISHESHUR MOOKERJEE

[B. L. R., Sup. Vol., 202: 3 W. R., Act X, 29

SUFFER ALI *v.* FUTTEH ALI

[W. R., 1864, Act X, 2

TARINEE CHURN BOSE *v.* KASHINATH SINGH

[W. R., 1864, Act X, 37

23. ——— Tender of pottah—*Decree contingent on offer of pottah.*—The previous tender of a pottah is not absolutely necessary to entitle a landlord to a decree for a kabuliat. The decree may make the obtaining of the kabuliat contingent on the offering of a corresponding pottah. MUNSOOR ALI *v.* BUNCO SINGH . . . 7 W. R., 283

NITTANUND GHOSE *v.* KISSEN KISHORE

[W. R., 1864, Act X, 82

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MAHOMED YACOOB HOSSEIN *v.* CHOWDHRY WAHED ALI

[4 W. R., Act X, 23: 1 Ind. Jur., N. S., 29

GOVIND CHUNDER ADDY *v.* AULOO BEEBEE

[1 W. R., 49

MODHOOSOODUN CHOWDHRY *v.* RAM MOHUN GHOSE . . . . . 8 W. R., 473

24. ——————— *Landlord and tenant.*—In order to entitle a landlord to sue for a kabuliat, he must tender a pottah. AKHOY SUNKUR CHUCKERBUTTY *v.* INDRO BHUSAN DEB ROY

[4 B. L. R., F. B., 58
12 W. R., F. B., 27

PERTAB CHUNDER BANERJEE *v.* PHILLIPPE

[2 W. R., Act X, 56

TROYLUCKHONATH CHOWDHRY *v.* KALEEMA BIBEE . . . . . 2 W. R., Act X, 96

UMBICA CHURN POTTRO *v.* BOIDANATH POTTRO

[1 W. R., 82

25. ——————— *Act X of 1859, s. 9.*—A landlord is not entitled, under Act X of 1859, s. 9, to require his tenant to give him a kabuliat unless the tenant holds under a pottah, or the landlord has tendered a pottah. GOBINLALL SEAL *v.* KINOO KOYAL . . . . Marsh., 400

DOORGA KANT MOZOOMDAR *v.* BISHESHUR DUTT CHOWDHRY . . W. R., 1864, Act X, 44

26. ——————— *Issues—Intervenors.*—Where a suit is brought for a kabuliat

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latter to come in as intervenors against the will of the plaintiff. RADHA NATH CHOWDHRY *v.* JOY SOONDER MOITRA . . . 2 C. L. R., 302

5. PROOF NECESSARY IN SUIT.

27. ——— Evidence of quantity of land—*Failure to prove quantity.*—In a suit for obtaining a kabuliat, failure to prove the exact quantity of land for which the kabuliat is sought to be obtained renders the suit liable to dismissal. SHIB RAM GHOSE *v.* PRAN PIRIA

[4 B. L. R., Ap., 89: 13 W. R., 280

28. ——— Proof of reasonable rent—*Proof of holding land in suit—Onus of proof.*—A landlord suing a raiyat for a kabuliat is bound to make out the reasonableness of the rent which he demands, and *à fortiori* that the defendant is holding the

KABULIAT—*continued.*

5. PROOF NECESSARY IN SUIT—*continued.*

particular land specified in his suit. SHIB CHUNDER BOSE *v.* RAM CHUND CHUND . 9 W. R., 521

29. ———— Rate of rent, Evidence of—*Customary rate of rent.*—A landlord is bound to prove that the rate of rent at which he claims a kabuliat is the rate that he has been in the habit of receiving from the tenant. RAM JEEBUN CHUCKERBUTTY *v.* KHOODEERAM CHATTERJEE [17 W. R., 388

30. ———— *Failure to prove rate of rent—"Probable rent."*—In a suit for a kabuliat for certain resumed lakhiraj where it was found that the quantity of land in the defendant's possession was less than that alleged by the plaintiff, and that the rates of rent deposed to were less than those claimed,—*Held* that the suit was rightly dismissed, and that the mere use of the word "probable" in describing the rate of rent

zamindari wrongfully held by the defendant under an invalid lakhiraj title was not sufficient to convert the defendant into a tenant of the plaintiff, and that, as the relation of landlord and tenant did not exist between the parties, the foundation was wanting for a suit for a kabuliat. SOWDAMINEE DEBIA *v.* MOHESH CHUNDER MOOKERJEE . 19 W. R., 262

31. ———— *Landlord and tenant—Enhancement—Plaint—Decree.*—A landlord,

ASMUT ALI KHAN CHOWDHRY [B. L. R., Sup. Vol., 974: 10 W. R., F. B., 14

HAMID ALEE *v.* AFEEOODEEN [1 B. L. R., S. N., 14: 10 W. R., 213

DINDAYAL PARAMANIK *v.* SURENDRANATH ROY [3 B. L. R., A. C., 78 note: 10 W. R., 77

32. ———— *Failure to prove rate of rent—Tenure invalid lakhiraj.*—*Held* that

as to raiyats whose rents are be enhanced. IMDAD HOSSEIN *v.* STACK . . . 12 W. R., 454

KABULIAT—*continued.*

5. PROOF NECESSARY IN SUIT—*continued.*

33. ———— *Suit for kabuliat at rate other than fair and equitable.*—A suit for a kabuliat at a given rent, where the rent claimed is found to be above what is fair and equitable, is a suit for enhancement to which the Full Bench ruling—*Gholam Mahomed v. Asmut Ali Khan Chowdhry, B. L. R., Sup. Vol., 974 10 W. R., F. B., 14*—applies, even though the rent is asked only for excess land. KUNCHUN DEO SINGH *v.* TEKAIT SIDH NATH SINGH . . . . 15 W. R., 289

34. ———— *Failure to prove*

35. ———— *Failure to prove rate of rent—Suit for kabuliat and assessment*

assessed JELLOR RUHMAN *v.* SEETARAM DUTT [21 W. R., 224

36. ———— *Enhancement of rent—Presumption of landlord's willingness to grant pottah.*—In order to entitle a landlord to sue

lam Mahomed v. Asmut Ali Khan Chowdhry, B. L. R., Sup. Vol., 974: 10 W. R., F. B., 14, followed. *Gopeenath Jannah v. Jetoo Mollah, 18 W. R., 272,*

KABULIAT—*concluded.*

5. PROOF NECESSARY IN SUIT—*concluded.*

dissented from. GOGON MANJI *v.* KASHISHWARY DEBI . . . . I. L. R., 3 Calc., 498

S. C. GOGON MANJI *v.* GOBIND CHUNDER KHAN [1 C. L. R., 241

37. ———————— *Enhancement of rent—Pottah, Tender of—Form of decree.*—If a plaintiff brings a suit for a kabuliat at an enhanced rate against a tenant holding a mouzah under him at a wholly insufficient rent, and the tenant sets up a wholly false and fraudulent defence,—*e.g.*, that the rent he pays is not liable to enhancement, as he holds under a pottah which entitles him to hold so long as he pays a certain fixed rent quite irrespective of the value of his holding; and if on enquiry it is found that the defendant's plea is entirely false, and that

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MAHOMED ASSUR *v.* POGOSE . . 2 C. L. R., 8

6. DECREE FOR KABULIAT.

38. ———— Form of decree—*Specification of duration of kabuliat—Decree in suit for kabuliat.*—In a decree for a kabuliat the term for which it is to remain in force should not be fixed. SWARNAMAYI *v.* GAURI PRASAD DAS [3 B. L. R., A. C., 270

39. ———————— *Kabuliat, Decree for, without fixing term, Effect of.*—Where a suit for a kabuliat at an enhanced rent is decreed without any term being fixed by the Court, the kabuliat executed is inoperative beyond the year of demand. KRISTO CHUNDER MURDRAJ *v.* POOROSUTTUM DASS [15 W. R., 424

MODHOO RAM DEY *v.* BOYDONATH DASS [9 W. R., 592

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See HEREDITARY OFFICES REGULATIONS. [5 Mad., 360

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See MADRAS REGULATION XXIX OF 1802. [4 Mad., 234
I. L. R., 9 Mad., 214, 283
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See MADRAS REVENUE RECOVERY ACT, s. 52 . . I. L. R., 15 Mad., 35

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See RIGHT OF SUIT—OFFICE OR EMOLUMENT . I. L. R., 10 Mad., 226
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1. ———— Right of women to hold office of karnam.—Women are incapacitated from holding the office of karnam. *Alymalammal v. Venkataramayyan, S. D. A., Mad., 1844, p. 85,* followed. VENKATARATNAMMA *v.* RAMANUJASAMI [I. L. R., 2 Mad., 312

2. ———— Office of karnam in zamindari village—*Right of woman to succeed—Mad. Reg. XXIX of 1802, s. 7.*—A woman cannot hold the office of karnam. CHANDRAMMA *v.* VENKATARAJU . . . . I. L. R., 10 Mad., 226

3. ———— Rights of de facto karnam—*Presumption of appointment from long tenure—*

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1879 [illegible] its duti[illegible] evidence [illegible] ancestor [illegible] the due[illegible] barred in respect of any of the arrears claimed. GANAPATHI *v.* SITHARAMA [I. L. R., 10 Mad., 292

4. ———— Karnam in permanently-settled estate—*Mad. Reg. XXXV of 1802, ss. 8 and 11—Mad Reg. XXIX of 1802, s. 5—Right to sue for removal of karnam—Delegation of such right to lessees of zamindari—Damages accrued by a karnam's neglect of a statutory duty.*—The lessees of a zamindari are not entitled to sue for the removal of a karnam from

[illegible]

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KAZI—*concluded.*

See MAHOMEDAN LAW—CUSTOM.
[I. L. R., 1 Bom., 633

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See MAHOMEDAN LAW—ENDOWMENT.
[I. L. R., 18 Bom., 401

KHAZANCHI.

See CRIMINAL PROCEDURE CODES, s. 45 (1872, s. 90)
[I. L. R., 4 Calc., 603

KHOJA MAHOMEDANS.

See HINDU LAW—CUSTOM—INHERITANCE AND SUCCESSION 12 Bom., 281, 294
[I. L. R., 3 Bom., 34

See RELIGIOUS COMMUNITY.
[12 Bom., 323

———— **Distinction between ancestral and self-acquired property among Khoja Mahomedans**—*Partition—Right of a son to obtain partition of ancestral property in his father's lifetime without his father's consent—Burden of proving property to be self-acquired.*—Amongst Khoja Mahomedans a son is entitled to obtain partition of ancestral estate in his father's lifetime without his father's consent By the law and customs of Khoja Mahomedans there is a distinction between ancestral and self-acquired property in reference to the power of the owner to devise or make a gift thereof similar to that which obtains under the ordinary Hindu law. The presump-

burden of proving the issues framed upon these allegations lay on the defendant In considering the question of the alleged custom and usages the Court adhered to the less stringent rule of proof applied in *Hirbai* v. *Gorbai*, *12 Bom., 294*. In the same suit where the defendant, having failed to establish the existence of the special custom and usages abovementioned, yet resisted the plaintiff's

[I. L. R., 13 Bom., 280

KHOJA MAHOMEDANS—*concluded.*

Held on appeal. The rule that Hindu law as administered in the Bombay Presidency, in the absence of proof of customs to the contrary, is the law applicable to Khoja Mahomedans, is not to be understood in its widest sense, but as confined to simple questions of inheritance and succession. The right of a son to partition in the lifetime of his father,

Held on the evidence that it was not established that amongst Khojas in Bombay there was any recognized right of a son to demand partition in the lifetime of his father, although it was proved to be customary in Kathiawar and Cutch for a father to give a son who wished for it his share of the family property, both ancestral and self-acquired. *Help* also, on the evidence, that there was no sufficient

individual, it is not enough to show that he inherited some property, it must be shown that the property inherited contributed in a material degree to the wealth so amassed AHMEDBHOY HUBIBBHOY *v.* CASSUMBHOY AHMEDBHOY
[I. L. R, 13 Bom., 534

KHOTI ACT (BOMBAY ACT I OF 1865).

See BOMBAY SURVEY AND SETTLEMENT ACT.

KHOTI SETTLEMENT ACT (BOMBAY ACT I OF 1880).

See KHOTI TENURE.
[I. L. R., 8 Bom., 525
I. L. R, 13 Bom., 373

See LEASE—CONSTRUCTION.
[I. L. R., 13 Bom., 373

See STATUTES, CONSTRUCTION OF.
[I. L. R., 18 Bom., 133

———— **Landlord and tenant**—*Presumption as to nature of tenancy in absence of evidence—Payment of rent—Mortgage by tenant—Sale of tenant's interest—Rights of purchaser—Suit for*

KHOTI SETTLEMENT ACT (BOMBAY ACT I OF 1880)—*continued*

contended that *A*'s interest terminated at his death, and that *S* was therefore not entitled to possession. *Held* that *S* was entitled to possession. The fact that *A* had paid rent to the khots showed that he was their tenant. In the absence of all evidence on the subject, the presumption was that tenancy was an ordinary tenancy from year to year continuable until legally terminated. There was nothing to show that the khots had ever terminated it *A*'s heir could not surrender it to the prejudice of the mortgagee. *S* therefore had purchased a tenancy which had never been legally put an end to, and was entitled to possession. Under the Khoti Settlement Act (Bombay Act I of 1880), occupancy tenancies are not transferable except under certain circumstances, but there is no prohibition to the transfer of an ordinary tenancy. SONSHET ANTUSHET TELI *v.* VISHNU BABAJI JOHARI . . I. L. R., 20 Bom., 78

———— s. 16—*Mortgagee of a co-sharer in the khotki settlement register, Preparation of—Survey officer's authority to determine the title of persons claiming as mortgagees only from a co-sharer.*—The word "khot" as used in the Bombay Khoti Act (Bombay Act I of 1880) does not include [illegible]

whether an alleged mortgage of a share has been redeemed or is still subsisting. DATTATRAYA GOPAL *v.* RAMCHANDRA VISHNU I. L. R., 24 Bom., 533

———— ss. 16 and 17—*Entry in the Survey Settlement officer's record, Finality of—Land Revenue Code (Bom. Act V of 1879), s. 108*—The Settlement officer's record fixing the amount of rent payable to a khot in respect of lands in the khoti [illegible]

register under s. 108 of the Land Revenue Code (Bombay Act V of 1879 or a settlement register as it is called in s 16 of Bombay Act I of 1880; it is one of the "other records" prepared under s 17 of the latter Act. VAIDKHAN ROSHANKHAN SARGURO *v.* SAKHYA . . . I. L. R., 20 Bom., 729

1. ———— s. 17—*Entry in Survey officer's record—Land Revenue Code (Bom. Act V of 1879), s. 108—Evidence Act (I of 1872), s. 40—Res* [illegible]

dence of a prior decision otherwise relevant under s. 40 of the Evidence Act as proof of *res judicata* whereby a Civil Court adjudged the land to be dhara. *Gopal Krishna Parachure v. Sakhojirav, I. L. R., 18 Bom., 133,* referred to and followed. RAMCHANDRA BHASKAR NAVAL *v.* RAGHUNATH BACHASHET SONAR . I. L. R., 20 Bom., 475

KHOTI SETTLEMENT ACT (BOMBAY ACT I OF 1880)—*continued*

2. ———— and ss. 20 and 21—*Entry in the Settlement officer's record—Evidence as to amount of rent due.*—An entry in the Settlement officer's record referred to in s. 17 of the Khoti Act (Bombay Act I of 1880) is conclusive as to the nature and amount of rent. The words "conclusive and final evidence of the liability" in s. 17 have the effect of shutting out any other evidence on the subject which might be adduced before the Civil Court. The words "when not final" in s. 21 of the Act refer to the finality ascribed in s. 17 to the entries of the nature therein mentioned, and which follow as contemplated in s. 20 on the Survey officer arriving at his decision. GOPAL KRISHNA PARACHURE *v.* SAKHOJIRAV . . I. L. R., 18 Bom., 133

3. ———— and ss. 16 and 33—*Entries made by Settlement officer in a form headed as issued under Bombay Survey and Settlement (Khoti) Act (Bom. Act I of 1865) when Bom. Act I of 1880 was in force—Finality of the entry as to the liability of the tenant—Occupancy-tenant—Jurisdiction of Civil Court.*—At a time when the Khoti Act (Bombay Act I of 1865) had been repealed and the Khoti Settlement Act (Bombay Act I of 1880) had come into operation, the Survey officer made, in a form which was headed as being issued under Act I of 1865, entries of rent payable by the occupancy-tenant to the khot with regard to some survey numbers of a fixed amount of grain, and with respect to one survey number as held rent-free, instead of a fixed share of the gross annual produce of the land as directed in the second [illegible]

RAGHUNATH *v.* BAL BIN RAGHOJI [I. L. R., 21 Bom., 235

4. ———— and ss. 20, 21, and 33— [illegible]

[I. L. R., 22 Bom., 95

5. ———— and ss. 21 and 33—*Bombay Land Revenue Code (Bom. Act V of 1879), ss. 108 and 110—Entry made by Survey officer—Conclusive and final evidence—Entry specifying the amount and nature of rent.*—Under [illegible]

record made under s. 17, that is declared to be final and conclusive evidence An entry of a Survey

KHOTI SETTLEMENT ACT (BOMBAY ACT I OF 1880)—*continued.*

officer specifying that an occupant, who was found to be not a dharekari or privileged occupant, should pay assessment and local fund cess only for the lands in his possession, is not conclusive and final evidence under the Khoti Act, s. 21, declaring such decision binding only on the parties until reversed or modified by a final decree of a competent Court. KRISHNAJI NARASINVA *v.* KRISHNAJI NARAYAN JOSHI

[I. L. R., 21 Bom., 467

6. ———————— and s. 33—*Bombay Land Revenue Code (Bom. Act V of 1879), s. 211—Determination by the settlement officer of the liability of the defendant to khot—Entry in the settlement register as occupancy-tenant—Revision of the record by the Collector—Jurisdiction of Civil Court—Decision as to the rent payable—Appeal* In May 1885, under s 33 of the Khoti Settlement Act (Bombay Act I of 1880), the Survey officer determined the liability of the defendant to pay to the khot as rent for his land the survey assessment and the local fund cess, and this was entered in the record made under s 17 of the Act, notwithstanding that in the settlement register the defendant was entered as an occupancy-tenant. In April 1889, the Collector, on the application of the plaintiff, revised the former record, which as revised showed that the defendant was liable to pay one-third of the produce of the land as rent to the khot A question having arisen as to the legality of the revised entry by the Collector,—*Held* that the revised entry in the record was duly made by the Collector under s 17 of the Khoti Settlement Act, and was conclusive and final evidence of the liability established by it. It is not open to a Civil Court to inquire into the legality or otherwise of the reasons which may have led to the determination of the amount of rent payable. The Khoti Settlement Act does not make the decision of rent final In s. 17 it only makes the entry, which is the result of the decision, final and conclusive evidence Under s. 33, an appeal lies from a decision, and the decision can be revised under s 211 of the Land Revenue Code (Bombay Act V of 1879) by the authorities therein mentioned. GOPAL RAMCHANDRA NAIK *v.* DASHRATHSHET

I. L. R., 21 Bom., 244

7. ———————— and ss. 21 and 33—*Bombay Land Revenue Code (Bom Act V of 1879), s. 108—Decision of Survey officer as to tenure—Power of Court to reverse or modify it*—The decision of a Survey officer determining the tenure on which a survey number is held is not final under the Khoti Act (Bombay Act I of 1880), and it can be reversed or modified by a competent Court ANTAJI KASHINATH *v.* ANTAJI MADHAV BHAVE

[I. L. R., 21 Bom., 480

8. ———————— and ss. 21 and 33—*Survey register—Defendants entered by Survey authorities as occupancy-tenants—Suit by plaintiffs for reversal of Survey officer's decision and for declaration that defendants were ordinary tenants—Decision of Survey officer as to tenure—Right of suit—Khot holding dhara land.*—A Survey officer under the Khoti Settlement Act (Bombay Act I of 1880) having determined and entered in the [illegible]

tenants thereof. The Judge dismissed the suit in appeal, holding that the survey entry was conclusive proof of the tenant's liability, and that it gave no cause of action to the plaintiffs. *Held*, reversing the decree, that the decision of the Survey officer as to tenure was not final, and that a suit like the present would lie A khot of a village can hold dhara lands. GOPAL SADASHIV PALEKAR *v.* NAGESHWAR SITARAM PHANSALKAR

[I. L. R., 21 Bom., 608

———— s. 20.

See LIMITATION ACT, ART 14

[I. L. R., 18 Bom., 244

1. ———————— and s 21—*Effect of decision of a Survey officer as to tenure—Burden of proof.*—S 20 of the Khoti Settlement Act (Bombay Act I of 1880) throws upon the Survey officer the duty of investigating and determining disputes as to any matter which he is bound to record The tenure upon which any particular survey number [illegible]

[illegible]

2. ————————and ss 21 and 22—*Jurisdiction of Civil Court—Order or act of Settlement officer—Power of Collector.*—Under ss 20 and 21 of the Khoti Settlement Act, it is the "decision" on the rival claims of the parties which is open to reversal by the Civil Court, and not the consequences of that decision, which as provided by s 22 are left to the Collector himself to undo or modify in accordance with the decision of the Civil Court. S 21 does not contemplate any "order" being made by the Survey officer between the [illegible]

[I. L. R., 18 Bom., 244

———— s 33—*Khot—Occupancy tenants*— [illegible]

ant. Until a new determination has been made by the Survey officer under s. 33 of the rent payable to the khot, a Civil Court must award rent to the old rate legally fixed. BAPUJIRAO *v.* GANU

[I. L. R., 24 Bom., 489

KHOTI TENURE.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY . 8 Bom., A. C., 1

See FOREST ACT, ss. 75 AND 76.
[I. L. R., 18 Bom., 670

See LANDLORD AND TENANT—LIABILITY FOR RENT . I. L. R., 19 Bom., 528

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT.
[I. L. R., 17 Bom., 677

1. ———— Proprietary rights—*Ownership of wood on village lands—Forest rights.*—The plaintiff sought to raise the question whether in

one, an imperial sanad, dated in A.D. 1653; the other, a Marathi document, dated in A.D. 1722.

desai, or collector of the revenue, on behalf of the Government. Therefore it was held that the inefat-

Government all the trees in reserves marked by survey numbers, and all the teak trees in the village. He had admitted that the Government had the power to make such reserves. It was not shown that the Government had cut down any izaili wood in the village, only that it had recovered the value of some izaili wood cut in the reserves without their leave. It was decided that the khot had not made out a

L. R., 7 I. A., 55

2. ———— Right to restoration of tenure after resumption by Government—*Conditional restoration.*—In a suit brought by a khot in 1862 to recover an hereditary share in a khoti village, which had been mortgaged by her husband in 1845, and taken directly under Government management by the Sub-Collector of Kolaba on failure by the mortgagee to pass the customary agreement (kabulat) for the security of the revenue for the year 1851-52, the Court of first instance decreed the restoration of the khoti estate on payment by the plaintiff of any loss which may have been sustained

KHOTI TENURE—*continued.*

by Government during its entire management, but

[3 Bom., A. C., 132

3. ———— Liability to assessment for lands while khoti village is under attachment by Government—*Bom. Act I of 1865, s. 11, cl. 1, and s. 38.*—A khot is liable to be assessed

meaning of s. 11, cl. 1, of Bombay Act I of 1865, and whether the powers in s. 38 of that Act apply to such lands RAMCHANDRA NARSINHA *v.* COLLECTOR OF RATNAGIRI . 7 Bom., A. C., 41

4. ———— Khot's right to profits for

under Government attachment, and it was found that the Khoti Act I of 1880 was not extended to

5. ———— Relations of inamdars with khots

sanad, dated 3rd September 1878. The defendants

KHOTI TENURE—*continued.*

were the vatandar (or permanent) khots of the same village. In a previous suit between the parties relating to the forest attached to the village, it was held, upon the construction of the Peshwa's sanad, that "so far as the Peshwa's Government could pass the soil of the village and its revenues by its grant, it did pass them to the plaintiff's ancestors," and that therefore the plaintiffs were the owners of the forest. *Narayan Dhondbhat* v. *Pitre Trimbak Vithal, I. L. R., 11 Bom., 689 note.* In the present suit, which was brought to compel the defendants to pass a fresh kabuliat every year to the plaintiffs and to recover the revenue from them for the

and did in fact recover, thal, or rent for lands re-

khots did not make them proprietors of the cultivated land in the village; that proprietary rights were not essential to the conception of a khotship; that in levying thal on the lands tilled by the plaintiffs the defendants did not necessarily assert, they certainly did not establish, a proprietary right to the soil as against the inamdars, and that the defendants held a position with rights and obligations not essentially different from those of other khots in the Ratnagiri district who were farmers of the public revenue. MORO ABAJI *v.* NARAYAN DHONDBHAT PITRE [I. L. R., 11 Bom., 680

6. ——— Proprietary right of khot to khoti vatani land—*Right of such khot to forest land and to timber and wood growing therein—*

Dunlop's proclamation of 1824, and several other khoti grants in the district. The defendant denied

KHOTI TENURE—*continued.*

plaintiff as khot was entitled to the jungle produce except timber; that in virtue of Dunlop's proclamation of 1824 the plaintiff acquired an unqualified right to the forest land in the village and timber growing on it, and that the defendant had no right to appropriate assessed or unassessed land for forest purposes, and awarded the plaintiff the sum of R600 as damages. On appeal by the defendant to the High Court,—*Held* that the application of the general rules of construction of grants to a subject by the State requires that language of such general import as is ordinarily to be found in the

Collector of Kolaba, 3 Bom., A. C., 132, and *Ramchandra Narsinha* v. *Collector of Ratnagiri, 7 Bom., A. C., 41,* that a permanent relationship was

mation. COLLECTOR OF RATNAGIRI *v.* ANTAJI LAKSHMAN . . . I. L. R., 12 Bom., 534

See SECRETARY OF STATE FOR INDIA *v.* SITARAM SHIVRAM . . . I. L. R., 23 Bom., 518

7. ——— Managing khot's right to create tenancies—*Maphi istava lands—Suti lands—Sanad—Construction—Fraud*—A managing khot is entitled, without any express authorization, to create tenancies in land, even though the reversionary interest in it is vested in the person whose lessee he is. If such a khot himself takes up land,

KHOTI TENURE—*continued.*

tenure on certain conditions and stipulations set forth in twelve clauses, the chief of which were the following: Clause 1st provided that the khot should annually pay to Government a fixed sum of R249 2 as. 35 rs. Clause 7th provided that the khot should allow the lands, which had been granted on maphi istava tenure to certain hawaldars before the date of the sanad, to continue in their possession, that he should every year recover from them the

owners of those lands should a new survey be made and a new assessment settled, the same should be settled by Government for the holders of the suti lands agreeably thereto. From 1845 to 1871 the management of the khoti village was entrusted to the defendant as a maktadar, or lessee, under two kabuliats passed by him—one in 1845 to *M I M*, the grantee of the khoti village, and the other in 1858 to the grantee's heirs and legal representatives. By clause 5th of the kabuliat of 1858 the defendant agreed to carry on the management of the village and render a detailed account of the balance of the

istava lands were sold by the Collector for arrears of assessment and bought in by Government. The defendant applied to the Collector to have the lands transferred to him, and the Collector transferred them to his name. Shortly afterwards the defendant acquired some more lands which were held on suti tenure in the village He either purchased them

to deliver up to the plaintiff either the maphi istava or the suti lands which he had acquired during his management. The plaintiff therefore sued as khot of the village to recover the said lands with mesne

should be declared to have acquired and held them in trust for the plaintiff. The defendant contended (*inter alia*) that the lands in suit were not included

lands direct from Government, and that the plaintiff

KHOTI TENURE—*continued.*

was only entitled to the assessment due on the lands which he had refused to accept. Lastly, the defendant denied that he had acted in fraud of the plaintiff's right in acquiring the lands in dispute on his own account. *Held*, on the construction of the sanad, that the plaintiff being the khot of the whole of the village exclusive of the land granted in inam, the maphi istava lands were included in the khoti grant, that the khot's interest in them, whatever might be the extent of it, was not separable from the khoti estate; and that the khot had a reversionary interest in the maphi istava lands as well as in the suti lands, which had been abandoned by their former occupants *Held* also that the defendant was not precluded by the terms of his lease from acquiring the lands in dispute on his own account The engagement to furnish accounts of the balance of the village revenue at the end of each year was simply an engagement to furnish the plaintiff with information which would be of use to him, and which indeed it would be necessary for him to possess when he resumed the management of the village on the determination of the lease It imported nothing more than that, and the whole transaction evidenced by the kabuliats was merely an assignment, in consideration of a fixed annual payment to be made

of this nature, and though he was bound jealously and scrupulously to protect the plaintiff's interests, so far as they were in his keeping, yet he was not bound by the strict rule which prohibits a trustee from acquiring for himself an estate of his *cestui que trust* Under cl 7 of the kabuliat of 1858, the defendant was at liberty either to take up waste lands himself or put in tenants; if he put in tenants

The defendant could therefore, without the interven-

not be impugned on other grounds. *Held* further that the defendant was not guilty of fraud, as there

was therefore not entitled to oust the defendant from the lands in suit. FAKI ISMAIL *v.* MAHOMED ISMAIL [I. L. R., 12 Bom., 595

KHOTI TENURE—*concluded.*

8. ——— **Lease containing words of inheritance not inalienable**—*Construction—Khoti Act (Bom. Act I of 1880), s. 9.*—The khots of the village of *A* in 1854 leased certain land to *B* by a lease which declared that "you (*B*) are to enjoy, you and your sons, grandsons, from generation to generation." The rent fixed by the lease was eleven maunds and six and a half pulis of bhat per year. *B* having died, his widow in 1878 transferred the lease to the plaintiff, who entered into

the rent paid by other occupying tenants in the village. The plaintiff thereupon sued to have it declared that he was entitled under the lease to hold the lands permanently at the rent thereby fixed. *Held* by the High Court that he was entitled to the declaration. The lease was one to hold in perpetuity at the fixed rent, but there were no words making the lease inalienable. There was no evidence of any custom of the village, nor anything in the Khoti Act I (Bombay) of 1880, which could be construed as a declaration of the existing custom of khoti villages when the Act was passed. VINAYAK MORESHVAR *v.* BABA SHABUDIN

[I. L. R., 13 Bom., 373

9. ——— **Khoti khasgi lands**—*Khasgi*

allotted to the takshim Both as mortgagee and purchaser of the takshim, plaintiff acquired a title to the khasgi thikans in dispute *Held* also that the effect of the decree which plaintiff had obtained against *N* in 1893 in the rent suit was that, in the absence of any agreement, *N* was a mere tenant-at-will of the khasgi thikans, liable to be evicted after

khoti nisbat lands. RAGHUNATHRAO *v* VASUDEV

[I. L. R., 23 Bom , 769

KIDNAPPING.

See CHARGE TO JURY—SPECIAL CASES —KIDNAPPING 7 W. R., Cr., 22

[I. L. R., 14 All., 25

KIDNAPPING—*continued.*

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—KIDNAPPING

[I. L. R., 18 All., 350

I. L. R., 19 All., 109

1. ——— **Requisites of offence**—*Penal Code, s. 363 —Abduction from lawful guardianship.*—To constitute the offence of kidnapping under s. 363 of the Penal Code, it must be shown that the person was abducted from lawful guardianship, and lawful guardianship is a guardianship by a person who is lawfully entrusted with the care or custody of a minor. QUEEN *v.* BULDEO

[2 N. W., 286

2. ——— **Continuing offence**—*Penal Code (Act XLV of 1860), s 363 —Semble*—That the offence of kidnapping from lawful guardianship punishable under s. 363 of the Penal Code is not a continuing offence. QUEEN-EMPRESS *v.* RAM SUNDAR

[I. L. R., 19 All., 109

3. ——— *Penal Code, ss. 361, 363—Enticing from lawful guardianship*—To

QUEEN *v.* MOHIM CHUNDER SIL

[16 W. R., Cr., 42

4. ——— The offence of kidnapping is complete when the person is actually taken out of the custody of his lawful guardian. RAKHAL NIKARI *v.* QUEEN-EMPRESS

[2 C. W. N., 81

5. ——— **Omission to enquire as to guardian**—*Child under ten years of age—Penal Code, s 361—Guardianship—Minor.*—A child under ten years of age is, *primâ facie*, subject to

6. ——— *dianship c* *XLV of*

put to in being bound to prove strictly, in cases of abduction, that the person from whose care the minor has been abducted was the guardian of such

KIDNAPPING—*continued.*

minor within the meaning of the legal acceptation of the word. EMPRESS v. PEMANTLE
[I. L. R., 8 Calc., 971

7. ———— *Penal Code, s. 361—Taking by father of minor wife from her husband—Guardianship of wife.*—The husband of a Hindu girl of fifteen is her lawful guardian; and if the father of the minor takes away the girl from her husband without the latter's consent, such taking away amounts to kidnapping from lawful guardianship, even though the father may have had no criminal intention in so doing. IN THE MATTER OF THE PETITION OF DHURONIDHUR GHOSE
[I. L. R., 17 Calc., 298

8. ———— *Enticing away*

9. ———— *Penal Code, s. 363—Betrothed girl after marriage is broken off.*—A person who carries off, without the consent of her

there kept for two days Then one *M* came and took her away to his own house and kept her there for

s. 363 of the Penal Code for kidnapping a girl under

11. ———— Husband taking away wife—*Abettors in taking away wife.*—A husband cannot be convicted of kidnapping for taking away his own

KIDNAPPING—*continued.*

wife, nor can those who aid him in doing so. QUEEN v. ASKUR . . . . W. R., 1864, Cr., 12

12. ———— Consent—*Taking by force or fraud—Penal Code, s. 361.*—The consent of a kidnapped person is immaterial, and it is not necessary for a conviction, under s. 361, Penal Code, that the taking or enticing should be shown to have been by means of force or fraud. QUEEN v. BHUNGEE AHEER . . . . . 2 W. R., Cr., 5

QUEEN v. AMGAD BUGRAH . 2 W. R., Cr., 61

QUEEN v. MODHOO PAUL . 3 W. R., Cr., 9

QUEEN v. KOORDAN SINGH . 3 W. R., Cr., 15

QUEEN v. SOOKEE . . . 7 W. R., Cr., 36

13. ———— Abetment of kidnapping— ... was convicted ... napping of a ... nor had left ... and at the instigation of one Komaren, the actual kidnapper, undertook to convey the minor to Kandy in Ceylon and was arrested on the way thither. The Sessions Judge reversed the conviction on the ground that

14. ———— *Penal Code (Act XLV of 1860), ss. 109, 363—Right to custody of children.*—A mother cannot have a right to the custody of her legitimate children adversely to the father. Ordinarily the custody of the mother is the custody of the father, and any removal of the children ... to be taken ... ther as guar- ... eeping. But ... and's house, taking ... house o ... married ... consent ... under s ... the offence of kidnapping. IN THE MATTER OF THE PETITION OF PRAN KRISHNA SURMA. EMPRESS v. PRANKRISHNA SURMA
[I. L. R., 8 Calc., 969 : 11 C. L. R., 6

15. ———— Concealment of kidnapped person—*Penal Code, s. 368—Concealment of kidnapper.*—S. 368 of the Penal Code refers to some other party who assists in concealing any person who has been kidnapped, and not to the kidnappers. QUEEN v. OOJEER . . . . . 6 W. R., Cr., 17

16. ———— *Penal Code,*

KIDNAPPING—*concluded.*

concealment of her, unless an intention of keeping her out of view be apparent. QUEEN *v* JHUBRUP [5 N. W., 133

17. ——————— *Girl merely staying temporarily in another house.*—The mere circumstance of a girl, who had been kidnapped, staying in the house of a person for a day or two, does not warrant the conclusion that she was wrongfully concealed by that person, with the object of baffling any search that might be made for her QUEEN *v.* CHUBBOA . . . . 5 N. W., 189

18. ——————— *Penal Code, ss. 363, 366, 368—Illegal concealment.*—When a girl of 11 years of age was taken out of the custody of her lawful guardian by the first prisoner, and [illegible]

19. ——————— *Restraint or confinement in attempt to kidnap.*—Where an act of restraint or confinement in an attempt to kidnap has been exercised in furtherance of the attempt, and goes to form part of that offence, and is not done with an intention or object which can be separated from the general intention to kidnap, it will constitute an integral part of that offence, and should not form the subject of a separate conviction and sentence. QUEEN *v.* MUNGROO . 6 N. W., 293

20. ——————— *Penal Code, s. 368—Confinement of kidnapped girl.*—If, knowing a girl has been kidnapped, a person wrongfully confines her and subsequently detains her as a slave, he is guilty of two separate offences punishable under the Penal Code. QUEEN *v.* SIKUNDER BHUKUT [3 N. W., 146

[illegible]

KISTBANDI.

See CASES UNDER CIVIL PROCEDURE CODE, 1882, ss. 257, 258 (1859, s. 206).

——————— Suit on—

See CONTRACT ACT, s. 25. [I. L. R., 4 Calc., 500

KNOWLEDGE.

See CASES UNDER ACQUIESCENCE.

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR . 6 B. L. R., 85 [12 B. L. R., 406

——————— of commission of offence.

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES. [5 B. L. R., 274

L

LABOURERS.

See ACT XIII OF 18[illegible] 8 W. R., Cr., [illegible]
[14 W. R., Cr., [illegible]
19 W. R., Cr., [illegible]
2 B. L. R., A. Cr., [illegible]
I. L. R., 1 Mad., [illegible]
I. L. R., 7 B[illegible], [illegible]
9 B[illegible], [illegible]
I. L. R., 8 Mad., [illegible]
I. L. R., 13 Mad., [illegible]

——————— Protector of—

See BENGAL ACT VI OF 18[illegible]. [3 B. L. R., A. Cr., [illegible]

——————— Wages of—

See BENGAL ACT VI OF 18[illegible]. [3 B. L. R., A. Cr., [illegible]

LACCADIVE ISLANDS.

See CRIMINAL PROCEEDINGS. [I. L. R., 13 Mad., 3[illegible]

LACHES.

See ACQUIESCENCE . I. L. R., 1 All., 83
[2 Mad., 114, 270
22 W. R., 267

See COSTS—SPECIAL CASES—DELAY. [I. L. R., 11 All., 372

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT [I. L. R., 15 All., 84

See LIMITATION ACT, s. 10. [I. L. R., 18 Bom., 119

See LIMITATION ACT, 1877, ART. 113. [I. L. R., 2 Calc., 323

See PRIVY COUNCIL, PRACTICE OF—REHEARING . 2 B. L. R., P. C., 10 [12 Moore's I. A., 244

See REVISION—CRIMINAL CASES—DELAY.

See SALE IN EXECUTION OF DECREE—PURCHASERS, RIGHTS OF—GENERALLY. [11 Bom., 193

See SUMMONS . 15 B. L. R., Ap., 12

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CIVIL CASES.
[22 W. R., 522
5 Bom., A. C., 63
17 W. R., 477
18 W. R., 87
2 C. L. R., 546

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 4 All., 154
I. L. R., 6 All., 125

See TRANSFER OF PROPERTY ACT, s. 41. [I. L. R., 17 All., 280

LACHES—*continued.*

1. ——— **Doctrine of laches, Application of**—*Suits for which period of limitation is provided.*—The equitable doctrine of laches and acquiescence does not apply to suits for which a period of limitation is provided by the Limitation Act. RAM RAU *v.* RAJA RAU . 2 Mad., 114

TARUCK CHUNDER BHUTTACHARJEE *v.* HURO SUNKUR SANDYAL . . . 22 W. R., 267

2. ——— *Suits for which period of limitation is provided.*—Mere laches, or indirect acquiescence short of the period prescribed by the statute of limitations, is no bar to the [illegible] in the plaintiff [illegible] doctrine of [illegible] to cases, if [illegible] regarded as a positive extinguishment of right. When they go merely to the remedy, the Courts have no power arbitrarily to substitute an extinguishing prescription different to that determined by the Legislature. PEDDAMUTHULATY *v.* TIMMA PEDDY [2 Mad., 270

3. ——— *Mortgagor—Limitation Act, 1859, s 1, cl 15—Estoppel.*—The laches [illegible] Act XIV of 1859. On account of the plaintiff's laches, the Judicial Committee disallowed mesne profits prior to the date of the institution of the suit, which had been allowed by the High Court. JUGGURNATH SAHOO *v.* SHAH MAHOMED HOSSEIN [14 B. L. R., 386 : L. R., 2 I. A., 49 23 W. R., 99

4. ——— *Suit for declara-* [illegible]

5. ——— *Reversioners suing within period of limitation but after delay in knowing their rights.*—When reversioners bring their suit within the period of limitation allowed by law, delay in asserting their rights is not by itself [illegible] KISHOON PANDAY [illegible]

6. ——— *Delay in suing—Suit not barred by limitation.*—A suit in which [illegible] where the plaintiff establishes a right not affected by limitation. RAMPHUL SAHOO *v.* MISREE LALL [24 W. R., 97

7. ——— *Delay in execution of decree—Interest, Right to.*—As long as a decree- [illegible] *v.* BHIKAREE ROY CHOWDHRY [5 W. R., Mis., 11

8. ——— *Delay in execution of decree—Debt barred by limitation—Admission of debtor.*—The decision of the Full Bench, *Bissessur Mullick v. Dhiraj Mahatab Chand Bahadoor, B. L. R., Sup. Vol., 967 10 W. R., F. B., 8*, that a decree once barred is always barred, for the reason that no proceedings in execution can be valid if instituted after three years from the date of the last proceeding, was held to apply in a case where the admissions of a judgment-debtor were pleaded in condonation of the decree-holder's laches in executing his decree. BHOOPUTTY LALL TEWAREE *v.* SOOCHEE SHEKHUR MOOKERJEE . . 12 W. R., 255

9. ——— *Delay in suing—* [illegible] twelve years from the time when the vendees purchased and were put into possession, it was held that he was not entitled to the assistance of the Court. BHUGRUCK CHUNDRA SAHOO *v.* GOLAM SHURUFF [10 W. R., 458

10. ——— *Right of person* [illegible] [1 Mad., 62

But *see* VIRABHADRA PILLAI *v.* HARI RAMA PILLAI . . . . . . 3 Mad., 38

11. ——— *Contract Act, 1872, ss 13, 20—Bill of exchange—Mistake—Void agreement.*—On the 3rd March 1881 *N* drew a bill in English at Cawnpore in favour of *F* on a Calcutta firm and gave it to *F*'s agent, who did not understand English. *F*'s agent kept the bill till the 10th March 1881 without ascertaining its nature [illegible] for a bill drawn on himself, but merely for a bill on Calcutta. *Held* that, assuming that the sale of the

LACHES—*continued.*

bill was void by reason of both parties being under a mistake as to the bill, yet *F* could not recover the amount of the bill from *N* because his agent had

12. ——————— *Mortgagee not*

1852, and that the produce from that date should be accordingly awarded him. LAKSHMI NARAYANA *v.* RAMAPA CHAKKIRA . . 1 Mad., 70

13. ——————— *Mortgage, Suit for redemption of—Neglect in applying in time for execution of decree for possession—Fresh suit for redemption.*—The plaintiff in this suit claimed possession of certain property by redemption of a usufructuary mortgage of it which he had given the defendants. The plaintiff had previously sued the defendants for possession of the property by redemp-

14. ——————— *Application to amend decree—Delay.*—Where a decree-holder came in, after the lapse of some three and a half years, and when one of the Judges who made the order ceased

these costs. OODAY TARA CHOWDRAIN *v.* JONAB ALI CHOWDRY . . 17 W. R., 358

15. ——————— *Redemption refused where mortgagor neglected to set aside a decree and sale of the mortgaged property under it.*—Redemption of a mortgage was refused, as it

PASARE *v.* NARHARI BIN SHIVAPPA [L. R., 27 I. A., 216

16. ——————— *Omission to appeal from order—Acquiescence, Presumption of.*—Where the Assistant Commissioner in execution in 1857 acted without jurisdiction in giving interest when the decree did not award it, and the claim for interest was disallowed by the Deputy Commissioner in execution in 1865, and the Deputy Commissioner's

that it was too late now to interfere with an order passed so long ago as 1857, as the judgment-debtor, by neglecting to appeal, must be presumed to have acquiesced in that order. RAM KERAN DEO *v.* FUHIMA BIBEE . . 7 W. R., 37

17. ——————— *Defence showing great delay on part of defendant—Suit for arrears of rent.*—Plaintiffs (patnidars) sued the defendants (dar patnidars) for arrears of rent. The defendants alleged that a part of the land had been taken by the Government, twenty-four years previously, for the purposes of railway, and they claimed an abatement on that ground. *Held* that the

BEHARI LALL SINGH . . 2 C. L. R., 5

18. ——————— *Ignorance of Ameen's proceedings in demarcating land—Delay.*—In execution of a decree for possession of land, an

question after so long a delay. COLLECTOR OF MONGHYR *v.* BHOBANY PERSHAD . 25 W. R., 183

19. ——————— *Loss of Government promissory notes—Suit on agreement to*

1869, when the note turned up in the Currency

20. ——————— *Omission to register certificate of sale—Right to second certificate for purposes of registration—Quære*—Whether the Subordinate Judge should have issued a new certificate of sale after the original one had been rejected by the Court as being unregistered in order

LACHES—*concluded.*

that the plaintiff might register it, the plaintiff having already lost, by his own laches, the right to register the original certificate. LALBHAI LAKHIMDAS *v.* KAMALUDIN HUSEN KHAN . 12 Bom., 247

21.———————— *Presumption against persons who do not enforce their rights—Unexplained delay—Disturbance of long possession—Dispute as to chur lands* —The presumption that usually arises against those who slumber on their rights is the stronger when applied to rights, the

possession persons who had enjoyed the property in question from 1835 to the present time; and as he was responsible for nearly twenty years of that

case, inasmuch as he had not proved the lands which had re-formed (if lands had re-formed in the bed of the river) to have been the same as those which belonged to his predecessors and had been diluviated, nor had he proved his title upon the ground of the *locus in quo* being an accretion to any lands of which he was possessed SHAM CHAND BYSACK *v.* KISHEN PROSAUD SURMA

[18 W. R., 4; 14 Moore's I. A., 595

"LAND."

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES.
[I. L. R., 24 Bom., 600

See PRESCRIPTION—EASEMENTS—LAND.
[I. L. R., 16 All., 178
I. L. R., 17 All., 87

———— Acquisition of—

See BENGAL TENANCY ACT, s. 84.
[I. L. R., 18 Calc., 271

See LAND ACQUISITION ACTS.

See RAILWAY COMPANY 10 B. L. R., 241

See STATUTES, CONSTRUCTION OF.
[12 Bom., 250

———— belonging to Government

See BOMBAY SURVEY AND SETTLEMENT ACT, 1865, ss. 35, 48
[I. L. R., 1 Bom., 352

———— covered with buildings, Suit for rent of—

See CASES UNDER ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—LANDS OCCUPIED BY BUILDINGS AND GARDENS.

See CASES UNDER RENT, SUIT FOR.

———— Exchange of—

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION. I. L. R., 21 Bom., 396

"LAND"—*concluded.*

See SALE FOR ARREARS OF RENT—INCUMBRANCES I. L. R., 23 Calc., 254

———— for building purposes.

See CASES UNDER ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—LANDS OCCUPIED BY BUILDINGS AND GARDENS.

———— reclaimed from the sea.

———— *Dock, Construction of.* —The plaintiff demised to the defendants for a term of 999 years certain lands a portion of which, A, was liable to an annual rent of R500 per acre. For the other portion, B, which was described in the lease as "being at times covered by the sea," a nominal rent of R1 per acre per annum was reserved. The lease contained a power to the lessees "to reclaim from the sea" the whole or any portion of B, and provided that upon such reclamation the lessees should pay for any portion of B which they might "reclaim from the sea" an enhanced rent at the rate of R500 per acre per annum The lessees also had power under their lease to dig or excavate any portion

they constructed gates, by means of which they

the reclaimed land into dry land, by rendering it secure from the ingress of the sea, with the view to its being used as such, the construction of the dock was not such reclamation as was contemplated in the

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———— Re-formation of—

See CASES UNDER ACCRETION.

———— Suit for—

See CASES UNDER JURISDICTION—SUITS FOR LAND.

LAND ACQUISITION ACT (VI OF 1857).

See APPEAL—ACTS—LAND ACQUISITION ACT.

See CASES UNDER ARBITRATION—ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS—ACT VI OF 1857.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS.
[6 Bom., A. C., 116

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT . 8 W. R., 327

See CASES UNDER LAND ACQUISITION ACT (X OF 1870).

See LIMITATION ACT, 1877, s. 19 (1859, s. 4)—ACKNOWLEDGMENT OF DEBTS.
[11 W. R., 1

LAND ACQUISITION ACT (X OF 1870).

See BOMBAY CIVIL COURTS ACT, s 16.
[I. L. R., 16 Bom., 277

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS . I. L. R., 18 Calc, 99
[L. R., 17 I. A., 90

See LANDLORD AND TENANT—BUILDING ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS,
[I. L. R., 22 Calc., 820

See RES JUDICATA—ESTOPPEL BY JUDGMENT . I. L. R., 20 Mad., 269

——— Sale of mortgaged land under—

See TRANSFER OF PROPERTY ACT, s 68.
[I. L. R., 13 Mad., 321

1. ——————— *High Court—Powers of superintendence.*—The Courts established

consequently has the power of superintendence over those Courts under s. 15 of 24 & 25 Vict, c. 104. IN THE MATTER OF THE PETITION OF ABDOOL ALI
[15 B. L. R., 197

ABDOOL ALI *v.* VERNER. VERNER *v.* ABDOOL ALI
[23 W. R., 73, 239

2. ——————— *Award of compensation—Payment of compensation awarded how enforced against the Collector—Appeal from an order irregularly made* —The Land Acquisition Act (X of 1870) did not provide for or contemplate

[I. L. R., 22 Bom., 802

———s. 3 and ss. 24 and 25—*"Land"—Value of works on land used for salt factory—*

[I. L. R., 17 Mad, 371

——— s. 9.

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.
[I. L. R., 16 All., 78

LAND ACQUISITION ACT (X OF 1870) —*continued.*

1. ——— s. 11—*Ascertainment of value and tender of compensation—Land given as compensation—Mad. Reg. II of 1803, s. 44—Darkhast rules—Collector, Power of.*—The owner of certain land taken up under the Land Acquisition Act,

authorizing the alienation of any land without the sanction of the Board of Revenue NARAYANA *v.* RAMACHANDRA . I. L. R., 13 Mad., 485

2. ——————— *Claim to share of compensation—Valuation in private transaction* —The

It appeared that the plaintiff's husband had mortgaged his share of the land in question to the defendants' predecessor in title in 1872 by an instrument in which his share was valued at R376.

——— ss. 13, 24, and 25—*Valuation of land acquired for public purposes—Time of acquisition—Award of compensation.*—When land has been acquired under the provisions of the Land Acquisition Act, 1870, changes in its condition, between the time of such acquirement and that of the actual conclusion of the award of compensation, are not to increase or lessen the valuation. The provision in s. 25 points to ascertaining the value

s. 13 and 24 of the Land Acquisition Act, 1870, at

LAND ACQUISITION ACT (X OF 1870)
—*continued.*

the time of the right therein attaching to the Government for a public purpose; therefore compensation had been rightly disallowed MANMATHA NATH MITTER *v.* SECRETARY OF STATE FOR INDIA
[I. L. R., 25 Calc., 194
L. R., 24 I. A., 177
1 C. W. N., 693

——— s. 15.

See APPEAL—ACTS—LAND ACQUISITION ACT . . I. L. R., 16 Bom, 525

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[I. L. R., 9 Calc, 838

1. ——— *Reference by Collector to District Court—Land claimed by Collector on behalf of Government or Municipality.*—The scope and object of the Land Acquisition Act (X of 1870) is to provide a speedy method for deciding the amount of the compensation payable by the Collector, when such amount is disputed, and the person or persons to whom it is payable. S. 15 of the Land Acquisition Act contemplates a reference when the question of the title to the land arises between the claimants who appear in response to the notice issued under s. 9, and who set up conflicting claims one against another as to the land required, which the District Judge as between such persons can determine. The Collector has no power to make a reference to the District Judge under s 15 in cases in which he claims the land in question on behalf of Government or the Municipality, and denies the title of other claimants, and the District Judge has no jurisdiction to entertain or determine such reference IMDAD ALI KHAN *v.* COLLECTOR OF FARAKHABAD I. L. R., 7 All., 817

2. ——— *Reference by Collector to Judge Land in respect of which reference is made claimed by Collector on behalf of Government.*—The Collector has no power to make a reference to the

Judge has no jurisdiction to entertain or determine such reference *Imdad Ali Khan* v. *Collector of Farakhabad, I. L. R., 7 All, 817*, followed. CROWN BREWERY, MUSSOORIE *v.* COLLECTOR OF DEHRA DUN . . . . I. L. R., 19 All., 339

3. ——— and ss. 38 and 55—*District Court, Powers of—Compensation, its principle and measure—Lands severed from a factory.*—The Land Acquisition Act provides for two classes of reference to the Judge, one to assess compensation

LAND ACQUISITION ACT (X OF 1870)
—*continued.*

account in assessing compensation for injurious affection. TAYLOR *v.* COLLECTOR OF PURNEA
[I. L. R., 14 Calc., 423

1. ——— ss. 16 and 17—*Act VI of 1857, s. 8—Acquisition of land by Government—Right of way.*—When land is taken by the Government under Act VI of 1857, the land is absolutely vested in the Government under s. 8, free from any right of way previously enjoyed by the public over such land. IN THE MATTER OF THE PETITION OF FENWICK
[6 B. L. R., Ap, 47: 14 W. R., Cr., 72

2. ——— *Act VI of 1857, s. 8—Right of way.*—A right of way cannot by the provisions of Act VI of 1857 continue to exist over land acquired by a railway company under that Act with the aid of Government. If, however, the railway company by their representations and conduct lay themselves under legal obligation to provide a way, such obligation may be enforced. COLLECTOR OF THE 24-PERGUNNAHS *v.* NOBIN CHUNDER GHOSE
[3 W. R., 27

the District Judge. Two assessors were appointed to aid him, one by the applicant and another by the Collector The nominee of the Collector was the Mamlatdar of Poona, a rate-payer and *ex-officio*

bad and must be set aside, as the Collector's nominee had, under the circumstances, a real bias, and was not a qualified assessor within the meaning of s. 19 of the Land Acquisition Act (X of 1870) KASHINATH KHARGIVALA *v.* COLLECTOR OF POONA
[I. L. R., 8 Bom., 553

2. ——— *Assessor, Appointment of—Disqualifications in an assessor—Bias—Objections to assessor's appointment not raised in time—Waiver—Effect on minor of guardian omitting to raise objection—Assessor as witness—Mamlatdar—Superintendence of High Court.*—Certain land

Mamlatdar acted as an assessor appointed by the Collector, and was also examined as a witness as to the value of the land. But no objection was taken

LAND ACQUISITION ACT (X OF 1870) —*continued.*

to his acting as an assessor. The District Judge eventually upeld the Collector's award. On an application under s. 622 of the Civil Procedure Code (Act XIV of 188-),—*Held* that the award was bad The Mamlatdar had, under the circumstances, a substantial interest in the matter, sufficient to disqualify him from acting as an assessor. *Kashinath* v *Collector of Poona, I. L. R., 8 Bom., 553,* followed.

taken to have waived it Assuming that there was a waiver, it could not bind the minor, as it was not for his benefit. *Held*, further, that a person who is appointed an assessor under s. 19 of the Land Acquisition Act performs *quasi*-judicial functions, and is therefore incompetent to testify as a witness in the same proceedings SWAMIRAO v COLLECTOR OF DHARWAR . . I. L. R., 17 Bom., 299

1. ——— s. 22—*Determination of amount of compensation—Assessors, Non-appearance of—Claimant, Non-appearance of—Pleader, Non-appearance of.*—Where, in a compensation case before the Land Acquisition Court, neither of the assessors nor the pleader for the claimant appear on the day

Land Acquisition Act, cause their assessors to attend or appoint others, the Court should appoint other assessors in the place of those who were not in attendance. IN THE MATTER OF THE PETITION OF KAMINI DASI v SECRETARY OF STATE FOR INDIA [I. L. R., 17 Calc., 380

2. ——— *Determination of amount of compensation—Assessor of claimant, Non-appearance of—"Neglect to act"—Appointment of another assessor by Judge without notice to claimant.*—On the hearing of a reference in a Land Acquisition case to determine the amount of compensation to be awarded, the assessor duly nominated on

assessor on the claimant's behalf, which the pleader declined to do, as one had been already duly nominated. The Judge thereupon himself nominated another assessor, and, proceeding with the case, confirmed the award of compensation by the Collector.

LAND ACQUISITION ACT (X OF 1870) —*continued.*

1. ——— s. 24—*Valuation of land—Annual rental—Market value.*—In assessing the market value of house property, situated in the town of Bulsar, acquired for public purposes under Act X of 1870, the Court awarded a capital sum which, at the rate of six per cent per annum, would yield interest equal to the ascertained annual rental of the premises after deducting the amount necessarily expended for annual repairs. CAREY v. BANU MIYA. CAREY v. KALU MIYA 10 Bom., 34

2. ——— *Compensation—Determination of value—Occupied and unoccupied land.*—In determining the compensation to be allowed for land taken for public purposes, the Court distinguished between the occupied and the unoccupied land. In the case of the former the income yielded was taken into account with a view to consider the number of years' purchase to be allowed for the land, and, in estimating the value of the godowns yielding rent, a deduction was made for the chance of some of them being unoccupied for part of the year, as well as for periodical repairs and municipal taxes. In the case of unoccupied land, it was held that the thing to be looked at was not the cost of what had been done to preserve the land or the money spent on improvements, but the market value at the time, with an allowance for the manner in which the land was taken from the claimant COLLECTOR OF HOOGHLY v. RAJ KRISTO MOOKERJEE [22 W. R., 234

3 ——— *Principle on which compensation is given—Market value of property.*—Where Government takes property from private persons under statutory powers, it is only right that those persons should obtain such a measure of compensation as is warranted by the current price of similar property in the neighbourhood, without any special reference to the uses to which it may be

THE LAND ACQUISITION ACT (X OF 1870). PREMCHAND BURRAL v. COLLECTOR OF CALCUTTA [I. L. R., 2 Calc., 103

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only once in a year, 4 annas was all that should have been deducted. SECRETARY OF STATE FOR INDIA v. SHAM BAHADOOR . I. L. R., 10 Calc., 769

LAND ACQUISITION ACT (X OF 1870) *—continued.*

5. ———— and s. 25—*Compensation—Mode of determining the amount of compensation to be given—Land in vicinity of town where building is going on—Market-value at time of awarding compensation, Meaning of*—The recognized modes of ascertaining the value of land for the purpose of determining the amount of compensation to be allowed under the Land Acquisition Act (X of 1870) are—(1) If a part or parts of the land taken up has or have been previously sold, such sales are taken as a fair basis upon which making all proper allowances for situation, etc., to determine the value of that taken. (2) To ascertain the net annual income of the land, and to deduce its value by allowing a certain number of years' purchase of such income according to the nature of the property. (3) To find out the prices at which lands in the vicinity have been sold and purchased, and making all due allowance for situation, to deduce from such sales the price which the land in question will probably fetch if offered to the public. In the case of land in the vicinity of a town where building is going on, it would be unjust to adopt the second of the above methods if there is a fair probability of the owner being able, owing to its situation, to sell or lease his land for building purposes. The value of land should be determined, not necessarily according to its present disposition, but laid out in the most lucrative and advantageous way in which the owner can dispose of it. The market value "at the time of awarding compensation" may fairly be taken to mean "at the time when proceedings under the Act are taken." IN THE MATTER OF THE LAND ACQUISITION ACT (X OF 1870). IN THE MATTER OF MUNJI KHETSEY . **I. L. R., 15 Bom., 279**

6. ———— and ss. 25, 15, 42—*Compensation—Mode of assessment—Antiquities not proved to have any market-value—Quarries—Persons interested in the land acquired*. The Government having, under the Land Acquisition Act (X of 1870), commenced proceedings to acquire a plot of land containing granite quarries besides ancient temples and sculpture, a reference was made to the District Judge (ss. 15, 18) as to the amount of the compensation to persons interested in the land. *Held* (1) with regard to the nature of the property that only the value of the stone quarries as yielding profit could form the subject of assessment, and the value of the antiquities could not; for, under the circumstances, no market value could be assigned to the antiquities; (2) the right, if not the only, course of proceeding was to estimate the rent at which possibly the whole plot might be leased, on the basis of how much rent a portion of the plot when leased for quarries had in fact obtained for the zamindar; (3) to calculate the purchase-money, as the first Court had done, at twenty-five years of such rent was proper, and no reason appeared for reducing this number of years to fifteen, (4) though quarrymen had been employed, and had earned money, on the plot, they were not interested therein, in the sense intended by the Act; and their earnings, in which the zamindar was not interested, could not enter into the question of compensation and increase the award; (5) under s. 42, fifteen per cent. was to be paid on the sum awarded. SECRETARY OF STATE FOR INDIA *v.* SHANMUGARAYA MUDALIAR

I. L. R., 16 Mad., 369
L. R., 20 I. A., 80

1. ———— s. 35—*Appeal—Difference of opinion between Judge and assessors—"Amount of compensation."*—The "amount of compensation" in s. 24, Act X of 1870, must be taken to mean the whole amount of the award, and not the amount of the different items to be taken into consideration separately under that section; therefore, where the Judge differed wholly from one assessor, and differed from the other assessor in the amounts awarded for the different items, but agreed with him in the total amount awarded,—*Held* there was not such a difference of opinion between the Judge and both assessors as to give a right of appeal from the Judge's decision under s. 35. ANANDAKRISHNA BOSE *v.* VERNER **13 B. L. R., 300: 22 W. R., 305**

2. ———— *Appeal—Appeal from decision of Judge and assessors—Collection charges, Amount of, to be deducted in cases of mokurari lease.*—In a case under the Land Acquisition Act, if there be a difference of opinion between the Judge and the assessors, or any of them, upon a question [illegible] differ also as to the amount of compensation to be awarded, s. 28 does not apply, but under s. 35, coupled with s. 30, in such a case an appeal will lie, and in such appeal all questions decided by the lower Court, whether the opinion of the assessors coincided with that of the Judge or not upon these questions, are open to the parties in the Appellate Court. SECRETARY OF STATE FOR INDIA *v.* SHAM BAHADOOR . **I. L. R., 10 Calc., 769**

3. ———— *Appeal—Difference of opinion between Judge and assessors—Compensation.*—Under s. 30, Act X of 1870, an appeal lies from the decision of the Judge where he differs from the assessors, whether the assessors agree with one another or not. IN THE MATTER OF THE LAND ACQUISITION ACT (X OF 1870). HEYSHAM *v.* BHOLANATH MULLICK. BHOLANATH MULLICK *v.* HEYSHAM . **11 B. L. R., 230: 17 W. R., 221**

4. ———— *Appeal—"District* [illegible]

LAND ACQUISITION ACT (X OF 1870)
—*continued.*

s. 35, Act X of 1870, include the High Court in its appellate jurisdiction, and there is nothing in the definition of those words given in Act I of 1868, s. 2, cl. 12, opposed to this meaning No appeal lies on a question of costs in a case under Act

5. ——————— *Apportionment of compensation referred to Judge—Denial by one party interested*

pensation awarded will not prevent an appeal lying from the order of a District Judge apportioning compensation. *Kishan Lal* v *Shankar Singh, Weekly Notes, All 1888, p 170,* overruled HUSAINI BEGAM *v.* HUSAINI BEGAM [I. L. R, 17 All., 573

——— s. 39.

See RES JUDICATA—ADJUDICATIONS. [I. L. R., 7 Calc., 406

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL [I. L. R., 9 Calc, 838

1. ——————— *Appeal—Apportionment of compensation—Judicial officer appointed as Judge in town of Madras—Appeal.*—No appeal lies to the High Court from a decision apportioning compensation by a judicial officer appointed to perform the functions of a Judge within the town of Madras under Act X of 1870, the Land Acquisition Act AROONACHELLA GRAMANY *v.* VELLIAPPA GRAMANY [8 Mad, 103

2. ——————— *Appeal—Additional Judge —District Judge*

[I. L. R., 16 Calc., 31

3. ——————— *Compensation, Apportionment of—Right of suit.*—A decree which apportions compensation made under s 39 of the Land Acquisition Act (X of 1870) by a Court to whom such matter has been referred under s. 38 of the same

4. ——————— *Act VI of 1857, s 14—Apportionment of compensation*—The compensation should be divided by the parties in the ratio of their respective interests in the land The zamindar of ghatwali lands is entitled to a share, in retaining, under Regulation XXIX of 1814, an interest in such lands. BHAGEERUTH MOODEE *v.* JABUR JUMMAH KHAN . . . . . 18 W. R., 91

5. ——————— *Apportionment of compensation, Claim and title to.*—When land is taken for

SUTTYO DYAL BANERJEE . . 12 W. R, 270

6. ——————— *Compensation, Apportionment of—Party in possession—Land taken for railway*—When a railway company takes land for public purposes, the party in possession at the time is *primâ facie* entitled to the money paid for it, until some one else establishes a prior claim. CHUNDEE CHURN CHATTERJEE *v.* BIDOO PUDDEN BANERJEE [10 W. R., 48

7. ——————— *Compensation, Apportionment of—Land taken for railway.*—Where lands are taken compulsorily, the principle upon which the amount of compensation is divisible amongst the zamindar and the holders of several subordinate tenures is by ascertaining the value of the interest of each holder of a tenure, and to give him a sum equivalent to the purchase-money of such interest. GORDON, STUART & Co. *v.* MOHATAB CHUNDER [Marsh., 490: 2 Hay, 565

8. ——————— *Compensation, Apportion-*

must be reckoned with reference not to the gross amount of compensation, but to the proportion which passed into his hands. DHERAJ MAHTAB CHAND *v.* CHITTRO COOMAREE BIBEE . . 16 W. R., 201

9. ——————— *Compensation, Apportionment of, for land—Owner under grant by zamindar retaining reversionary interest.*—It was held that

10. ——————— *Compensation, Apportionment of.*—A patnidar is entitled to compensation on account of lands in his patni taken for public purposes although there was no agreement to that effect. JOY KISHEN MOOKERJEE *v.* REAZOONISSA BEEBEE . . . . . 4 W. R., 40

11. ——————— *Apportionment of compensation between zamindar and patnidar, Principle of.*—The apportionment between zamindar and patnidar of the amount awarded as compensation for

LAND ACQUISITION ACT (X OF 1870) —*continued.*

land taken by Government under the Land Acquisition Act will depend partly on the sum paid as bonus for the patni, and the relation that it bears to the probable value of the property, and partly on the amount of rent payable to the zamindar, and also the actual proceeds from the cultivating tenants or under-tenants BUNWARI LAL CHOWDRY v. BURNOMOYI DASI . . . I. L. R., 14 Calc., 749

12. ——— *Compensation, Apportion-*

where the grantors of the several intermediate tenures have received a sum of money as a bonus for the grant. MAHATAB CHAND BAHADOOR v. BENGAL COAL COMPANY . . . 10 W. R., 391

13. ——— *Compensation, Apportionment of—Compensation for land taken for public purposes—Distribution of compensation.*—Where

zamindar received a little more than sixteen years'

14. ——— *Apportionment of compensation-money—Zamindar—Patnidar—Dar-patnidar—Construction of document.*—Where a patni and a dar-patni has been given of land which

15. ——— *Act VI of 1857—Compensation for land taken.*—A portion of the area of two villages having been taken under Act VI of 1857, and compensation deposited in the Collectorate, the dar-patnidar sued for the same, contending that the zamindar was entitled to twenty times the rental payable by the dar-patnidar, less expenses of collection. The zamindar claimed twenty times the profits he derived from the patnidar, less revenue paid to Government. *Held* that, as the plaintiff's calculation secured to the zamindar a more favourable result than that for which the latter himself

16. ——— *Distribution of compensa-*

taken under the Land Acquisition Act, they are clearly entitled to a proportion of the compensation granted. In ascertaining the proportionate interest

made for the expenses of cultivation. APPASAMI MUDALI v. RANGAPPA NATTAN

[I. L. R., 4 Mad., 367

17. ——— *Apportionment of compensation—Landlord and tenant.*—The mode of apportionment of compensation between landlord and tenant considered DUNNE v. NOBO KRISHNA MOOKERJEE . . . I. L. R., 17 Calc., 144

18. ——— *Land Acquisition Act (I of 1894)—Superior zamindar and talukhdar—*

superior zamindar and the talukhdar Where the talukhdar's interest is of a permanent character only regarding the duration and not regarding the rent

Dhunput Singh, I. L. R., 7 Calc., 585, referred to. BIR CHUNDER MANIKHYA v. NOBIN CHUNDER DUTT

[2 C. W. N., 453

19. ——— The mode of apportionment

of

der

I.

Dhunput Singh, I. L. R., 7 Calc., 585, followed KHETTER KRISTO MITTER v. DINENDRA NARAIN ROY . . . . . . 3 C. W. N., 202

20. ——— *Accretion to parent tenure—Beng. Reg XI of 1825, s. 4, cl. 1—Rate of rent*

were not intended to lay down an inflexible rule

LAND ACQUISITION ACT (X OF 1870)
—*continued.*

applicable to all cases, and in the absence of any special circumstance the rate of rent to be assessed upon an accretion should be in proportion to that paid for the parent tenure. Where therefore such accreted land is taken up under the Land Acquisition Act, the compensation awarded should be divided by giving the landlord the value of the rent payable in respect thereof, with 15 per cent for compulsory sale, and the balance to the tenure-holder. *Golam Ali v Kali Krishna Thakur, I. L. R., 7 Calc., 479*, commented on CHOORAMONI DEY *v.* HOWRAH MILLS COMPANY I. L. R , 11 Calc., 696

21. ——————— *Compensation, Award of —Frontage and back sites—Parties—Lessees of such land, Right of, to be joined in suit by the owner.*—The claimant, Kashinath owned certain land, measuring 173 436 square feet, situated in the city of Poona This land was originally devoted to agricultural purposes, and continued also a number of fruit trees and some buildings, and was in the form of a square enclosed and surrounded by houses on all sides, except towards the south, on which side it

behalf of the municipality of that city for the purposes of erecting a central market. The claim-

frontage and back sites, in the proportion of one to three, appraising it at the average rate of eighteen sales enumerated in certain sale deeds at ten annas per square foot, and some at less than one anna. His award for the land was R30,674 for the land alone, R2,517 for the materials of buildings, R400 for trees, and R700 for severance. The sum total was made subject to R3,000 awarded to the second and third claimants for their unexpired leases On appeal by

which shut it out from communication with the town, except by opening a passage of ten feet wide. As there was no evidence to show that there was any

LAND ACQUISITION ACT (X OF 1870)
—*continued.*

22. ——————— and s. 40—*Proceedings under—Finality.*—In proceedings under the Land Acquisition Act (X of 1870), ss. 38 and 39, the persons entitled to take land compulsorily deal only with those who are in possession of it, or who are ostensibly its owners It may happen that the real owner, being an infant, or a person otherwise under disability, does not appear, and is not dealt with in the first instance There is therefore a proviso in s 40 to the effect that nothing contained in that or the preceding sections "shall affect the liability of any person who may receive the whole, or any part, of any compensation awarded under the Act to pay the same to the person lawfully entitled thereto" This applies only to persons whose rights have not been dealt with in adjudications in pursuance of

BAHADUR *v* RAM BANDHU RAI
[I. L. R., 7 Calc , 388 : 10 C. L. R., 393
L. R., 8 I. A , 90

Contra, DWARKA SINGH *v* SOLANO
[22 W. R., 38

23. ——————— *Settlement of amount of*

settling the amount of compensation under the previous provisions of the Act, and any dispute as to the apportionment is only decided as between those persons who are actually before the Court. A separate

apportioned. HURMUTJAN BIBI *v.* PADMA LOCHUN DOSS . . . . I. L. R., 12 Calc., 33

24. ——————— *Power to award compensation—Judge and assessors sitting together.*—There is nothing in Act X of 1870 which gives the Judge and assessors sitting together power to determine the right to compensation or the title to the land for which compensation is to be assessed. Where therefore the Collector tendered compensa-

LAND ACQUISITION ACT (X OF 1870) —*continued.*

high-water mark ; but they should have determined what was a proper compensation for each description of land. IN THE MATTER OF THE PETITION OF ABDOOL ALI . . . . 15 B. L. R., 197

S C. ABDOOL ALI *v.* VERNER. VERNER *v.* ABDOOL ALI . . 23 W. R., 73, 239

25. ——— *Award of compensation—Question of title.*—Where, in a suit for the recovery of the money awarded by Government for some land acquired for public purposes, the Judge, instead of deciding as between the parties in possession the money value of their respective rights, determined as between the persons in possession and others whose claims had remained dormant until the acquisition of the land the relative strength of their titles,—*Held* that the order of the Judge was *ultra vires*, his duty under the Land Acquisition Act being to determine the money value of ascertained interests, and not to try questions of title. GOUR RAM CHUNDER *v* SONATUN DOSS . . 25 W. R., 320

26. ——— *Apportionment of compensation—Question of title.*—Under s. 39 of the Land Acquisition Act, it is the duty of the Judge in apportioning the compensation-money which he is directed to apportion to decide the question of title between all persons claiming a share of the money *Semble*—No decision under the Land Acquisition Act should be treated as *res judicata* with respect to the title to the other parts of the property belonging to persons who may come before the Judge under s. 39 NOBODEEP CHUNDER CHOWDHRY *v* BOOPENDRO LALL ROY

I. L. R., 7 Calc., 406 : 9 C. L. R., 117

27. ——— *Judge appointed under s. 3—Power of Judge to give costs.*—A Judge appointed under s. 3 of Act X of 1870 to perform the functions of a Judge under the said Act generally within the local limits of the ordinary original jurisdiction of the High Court has no power to award costs in respect of proceedings under s. 39, Part IV of the Act. RAMANJEM NAIDOO *v* RUNGIAH NAIDOO . . . . 8 Mad., 192

——— s. 55 (Act VI of 1857, s. 32).

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS—ACT VI OF 1857.

See COLLECTOR . I. L. R., 16 Mad., 321

——— *Part of property acquired for public purposes—Owner desiring that the whole shall be acquired—Right of owner not confined to small or confined areas—Convenience of owner not the test.*—The Local Government having appropriated for public purposes under the Land Acquisition Act (X of 1870) some of the out-houses attached to a dwelling-house, and part of the compound in which they were situate, without taking the house with its other out-houses or appurtenances, or the rest of the compound, the owner objected, under s. 55 of the Act, that the Government should take the whole of such property or none. *Held* applying to s. 55 the interpretation placed by the Courts in England upon the corresponding s. 92 of the Land Clauses Consolidation Act (8 & 9 Vict., c. 18), that the section was applicable, and the objection must be allowed *Grosvenor* v. *Hampstead Junction Railway Company, 26 L. J., N. S., Ch., 731*; *Cole* v. *West London and Crystal Palace Railway Company, 28 L. J., Ch., 767*, and *King* v. *Wycombe Railway Company, 29 L. J. Ch., 462*, referred to. *Held* also that the rule was not in England restricted to small or confined areas, and that the test was not whether the part appropriated could be severed from the rest of the property without inconvenience to the owner. KHAIRATI LAL *v.* SECRETARY OF STATE FOR INDIA

I. L. R., 11 All., 378

——— s. 58—*Award of compensation—Effect on award of suit to recover compensation from person to whom it has been awarded.*—An award under the Land Acquisition Act cannot be affected by a suit to recover from the party to whom compensation has been awarded and to have plaintiff's title declared to the land concerned. KAMINEE DEBIA *v.* PROTAP CHUNDER SANDYAL . 25 W. R., 103

LAND ACQUISITION ACT (I OF 1894).

See MUNSIF, JURISDICTION OF.

I. L. R., 20 Mad., 155

1. ——— s. 2, sub-s. 2—*Land Acquisition Act (X of 1870)—Act I of 1894, s. 2, sub-s. (2)—Contest before the Collector—Admission before the Judge—Increased value, s. 25, Act I of 1894.*—

SARMA *v.* DEPUTY COMMISSIONER OF SYLHET

1 C. W. N., 562

2. ——— *Award of compensation—Payment of compensation awarded how enforced against the Collector—Appeal from an order irregularly made—Practice—Procedure.*—On the 10th February 1894, under the Land Acquisition Act

date for payment. On the 1st March 1894, the new

or before the 20th May 1896. No payment, however, was made, and the matter came before the new Judge (Mr. FitzMaurice) for final order. He held that neither under Act X of 1870 nor the new Act I of 1894 had he any power to enforce payment agains

LAND ACQUISITION ACT (I OF 1894)—*continued.*

its provisions, but left the persons interested to a suit to enforce such payment. The proceedings under that Act were therefore at an end when the award was made. That being so, there were no proceedings pending in the case when the new Act I of 1894 came into force. Cl 2 of s. 2 of that Act therefore did not apply, and no further steps could be taken under that Act. *Per* RANADE, J—The District Judge's order appealed from was improperly made The Assistant Judges had jurisdiction to make the pre-

wrong, and the irregularity of the District Judge's order thus led to no failure of justice, and fell under s 578 of the Civil Procedure Code (Act XIV of 1882). *Quære*—Whether an award made under the provisions of Act I of 1894 can be enforced against the Collector by execution proceedings. NILKANT GANESH NAIK *v.* COLLECTOR OF THANA

[I. L. R., 22 Bom., 802

——— s. 10.

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES [I. L. R., 27 Calc., 985

——— s. 23—*Compensation—Acquisition of land "injuriously affecting other property"*—

Act, includes the "purpose" for which the land is taken as well as the actual taking. And the words "at the time" in cl. 4 of the same section must be taken to mean the time when the damage takes

entitled under the Land Acquisition Act to compensation for the loss of the ferry. COLLECTOR OF DINAGEPORE *v.* GIRJA NATH ROY

[I. L. R., 25 Calc., 346

——— s. 25—*Objection to amount of compensation before Collector—Withdrawal of objection on appeal—Right to increased amount given*

LAND ACQUISITION ACT (I OF 1894)—*concluded.*

on appeal—Where a claimant objected to the

——— s. 53.

See FALSE EVIDENCE—GENERAL CASES. [I. L. R., 27 Calc., 820

——— s. 54 and s. 30—*Award of compensation—Order for apportionment of compensation—Appeal*—The term "award" used in s. 54,

NARENDRA . . I. L. R., 23 Calc., 526

SHEO RATTAN RAI *v.* MOHRI [I. L. R., 21 All., 354

LANDHOLDERS.

See CASES UNDER MADRAS RENT RECOVERY ACT (VIII OF 1865), s. 1.

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876).

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE [I. L. R., 8 Calc., 923

See POSSESSION—EVIDENCE OF POSSESSION . I. L. R., 8 Calc., 853

See TITLE—EVIDENCE AND PROOF OF TITLE—GENERALLY [I. L. R., 8 Calc., 853

——— s. 7—*Delimitation of land of adjoining proprietors—Correction of entry in register.*—On a claim for the correction of the entry

disputed by the defendants, who were the owners

the Court below in the plaintiffs' favour, ordered a local enquiry, with a view to the accurate delimitation of their estate. This, with the subsequent decree, resulted in the area being defined therein by reference to a map made and marked by an Ameen. This was not a just division; for, while it divided the chuckla so as to give the defendants their full share, it went beyond it, to make up the full area of the

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876)—*continued.*

plaintiffs' share. Their Lordships therefore made

—————— ss. 38 and 78—*Patnidar—Proprietor—Right of suit—Suit for rent.*—A patnidar is not a proprietor within the meaning of ss 38 and 78 of the Land Registration Act, and he need not therefore get his name registered before suing for rent. SUKURULLAH KAZI *v* BAMA SUNDARI DASI

[I. L. R., 24 Calc., 404

1. —————— s. 42—*Suit for rent by unregistered proprietor—Transfer of proprietary right by succession.*—S 42 of the Land Registration Act makes it clear that every person succeeding to the proprietary right in any estate must apply for registration of his name PUNUK LALL MUNDAR *v.* THAKUR PROSAD SINGH . I. L. R., 25 Calc., 717

2. —————— and s. 78—*Administrator—Obligation of administrator to register his name before bringing suits for rent—Right of suit.*—A person who is an administrator, and as such the

tenants of the estate for rent McINTOSH *v* JHARU MOLLA . . I. L. R., 22 Calc., 454

—————— ss. 52, 55.

See JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES.

[I. L. R., 10 Calc., 350

—————— *Effect of orders under the Act—Possession, Confirmation of.*—An order made under s. 55 of Bengal Act VII of 1876 prevents the person against whom it is made from relying on his previous possession in a subsequently instituted suit for confirmation of possession An order made under s 52 of the same Act has not that effect. OMRUNISSA BIBEE *v.* DILAWAR ALLY KHAN

[I. L. R., 10 Calc., 350

—————— s. 55.

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.

[12 C. L. R., 139
I. L. R., 26 Calc., 845

See EVIDENCE ACT, s. 35

[I. L. R., 9 Calc., 431

See POSSESSION—EVIDENCE OF POSSESSION . . I. L. R., 9 Calc., 431

—————— s. 78.

See BENGAL TENANCY ACT, s. 95.

[I. L. R., 23 Calc., 634

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876)—*continued.*

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT.

[I. L. R, 9 Calc., 517: 2 C. L. R., 141

See LIMITATION ACT, 1877, s. 22.

[I. L. R., 19 Calc., 760

See MERGER . I. L. R., 19 Calc., 760

1. —————— *Suit for rent by unregistered proprietor—Application for registration as proprietor.*—S. 78 of the Land Registration Act, 1876, precludes a person claiming as proprietor from suing a tenant for rent until his name has been actually registered as such under the Act. A mere application to be registered is not sufficient for the purpose. SURYA KANT ACHARYA BAHADUR *v.* HEMANT KUMARI DEBI I. L. R., 16 Calc., 706

DHORONIDHUR SEN *v.* WAJIDUNNISSA KHATOON

[I. L. R, 16 Calc., 708 note

2 —————— *Suit for arrears of rent—* ... *Act XVII of* ... *(XL of* ... *1889), s. 4—Transfer of Property Act (IV of 1882), s 131*—The plaintiff sued the defendants in the Calcutta Small Cause Court for arrears of rent of certain premises in Calcutta, without having previously caused his name to be registered under

be dismissed by reason of s 78 of the Land Registration Act. *Held* by the majority of the Full Bench,

Tenancy Act (VIII of 1885), the decision of the question whether it was or not rightly decided had no bearing on a case like the present brought in the Calcutta Small Cause Court, and relating to property in Calcutta where the Bengal Tenancy Act is not applicable *Per* NORRIS, J.—The case of *Dhoronidhur Sen v. Wajidunnissa Khatoon*, as reported, is wrongly decided *Held* by PETHERAM, C.J., and BEVERLEY, J.—On the construction of the Land Registration Act, an unregistered proprietor of an estate has no cause of action on which he can institute a suit for the rent. The fact of his obtaining a

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876)—*continued.*

certificate of registration after the institution of the suit could therefore have no effect in validating the suit brought whilst he was an unregistered proprietor. Assuming that s. 78 of the Act was applicable to the case, the suit ought to be dismissed. The case of *Dhoronidhur Sen v. Wajidunnissa Khatoon* was in the above view of the matter rightly decided. *Held* by PETHERAM, C.J., and PRINSEP and PIGOT, JJ., in referring the case to the Full Bench that the Land Registration Act (Bengal Act VII of 1876) is applicable to properties in Calcutta. ALIMUDDIN KHAN v. HIRA LALL SEN . . . . . I. L. R., 23 Calc., 87

3. —————— *Suit for rent by unregistered proprietor—Transfer of proprietary right by succession.*—S. 78 of the Land Registration Act, 1876, precludes a person claiming as proprietor from suing a tenant for rent unless his name has been registered as such under the Act. It is immaterial how the transfer of proprietorship is effected, whether it is a case of transfer by purchase or a case of transfer by succession. *Surya Kant Acharya Bahadur v. Hemant Kumari, I. L. R., 16 Calc.,* 706, applied. PUNUK LALL MUNDAR v. THAKUR PROSAD SINGH . I. L. R., 25 Calc., 717

4. —————— *Registration in regard to a share—Right to receive rent.*—When some out of several proprietors of an estate, who collect the rent jointly, have registered their names under the Land Registration Act, all the proprietors are entitled to join in an action for the whole rent, but a decree will be made only in respect of the rent proportionate to the share registered. Under s. 78 of the Land Registration Act, the penalty of non-registration is the forfeiture, not of the whole rent, but of the rent of the share in regard to which the landlord is unregistered. NILMADHUB PATRA v. ISHAN CHANDRA SINHA . . I. L. R., 25 Calc., 787

GOBINDA CHANDRA PATRA v. ISHAN CHANDRA SINGH . . . 2 C. W. N., 600

5. —————— *Suit for rent, without registration of name, whether maintainable by the legal representatives.*—A suit for rent, accruing due partly during the lifetime of a registered proprietor and partly after his death, was brought by his representatives, the defence was that the suit was not maintainable, inasmuch as the plaintiffs were not registered proprietors, and had no certificate under the Succession Certificate Act. *Held* that s. 78 of

their names registered under the Land Registration Act. NAGENDRA NATH BASU v. SATADAL BASINI BASU . . . I. L. R., 26 Calc., 536
[3 C. W. N., 294

See SHERIFF v. JOGEMAYA DASI
[I. L. R., 27 Calc., 535

decided under the Bengal Tenancy Act.

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876)—*continued.*

6. —————— *Bengal Tenancy Act (VIII of 1885), s. 60—Right of suit—Suit for rent—*

MEHER ALI . . I. L. R., 26 Calc., 712

ABDUL KHAIR v. MEHER ALI 3 C. W. N., 381

7. —————— *Suit for rent—Legal representative of registered proprietor—Landlord and tenant.*—A suit for rent was instituted by the registered proprietor of an estate, who died during the

DARI DEBI v. KANAI LAL SHAHA
[I. L. R., 27 Calc., 178

8. —————— *Suit for rent—Registration not effected at time of suit—Sufficiency of registration of name before decree.*—A suit for arrears of rent cannot be dismissed merely on the ground of the plaintiff's name not being registered under the Land Registration Act at the time the suit was brought, and it is sufficient if the name is registered before the decree is made. *Alimuddin Khan v. Hira Lall Sen, I. L. R., 23 Calc., 87,* explained. HAREKRISHNA DAS v. BRINDABUN SHAHA . . . . 1 C. W. N., 712

9. —————— *Suit for rent—Liability to parent—Person whose name is "required" to be registered—Want of registration at the time the suit is brought—Landlord and tenant.*—The pro-

rents for the years 1891 and 1892, it was contended that plaintiff No. 1 could not recover, as he had not been registered under Act VII of the 1876. *Held*

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876)—*concluded.*

regarded as a person who was "required" to be regis- ... of the section, as he could ...

the lifetime of that ... for the years 1893 and ... been registered ...

not maintain the ... ground for the dismissal of the suit ... *Khan v. Hira Lall Sen, I. L. R., 23 Calc., 87,* and *Harekkrishna Dass v. Brindabun Shaha, 1 C. W. N., 712,* followed. BELCHAMBERS v. HASSAN ALLI MIRZA . **2 C. W. N., 493**

———— s. 89.

See LIMITATION ACT, 1877, ART. 14.
[I. L. R., 10 Calc., 525

See RELIEF **I. L. R., 10 Calc., 525**

LAND REVENUE.

See CASES UNDER N.-W. P. LAND REVENUE ACT (XIX OF 1873).

See SETTLEMENT—CONSTRUCTION.
[I. L. R., 17 Bom., 407

1.———— Liability of lands in Kanara district to revenue—*Maxim, "Nullum tempus occurrit regi."—Bom. Act VII of 1863, s. 21— ... XVII of 1827, ss. 4 and 7—Bom. Act* ... a holder ...

contrary, Government ... payable in respect of land so held ... the land revenue in Kanara narrated. The question of the cultivating raiyat's property in the soil considered both with reference to the Hindu and the Mahomedan law. Similarity of the mirasi, kani yatchi, the janmakari, the swasthyan, and the muli tenures mentioned. The rule of the Hindu and Mahomedan as well as of the English law is *nullum tempus occurrit regi.* The extent to which that maxim has been restrained by legislation in the Presidency of Bombay considered. Construction of Bombay Act VII of 1863, s. 21, and Bombay Act I of 1865, ss. 25 and 49. The revenue system of Akbar under Todar Mul and of Aurangzeb discussed. If ... either by grant, contract, or ... and for the ... rts have no ... VII of 1827, ... the assessment made by the competent Revenue authority. VYAKUNTA BAPUJI v. GOVERNMENT OF BOMBAY . **12 Bom., Ap., 1**

LAND REVENUE—*continued.*

2.———— Liability to land revenue of village of Kabilpur in district of Surat—*Maxim "Nullum tempus occurrit regi"—Bom. Act VII of 1863, s. 21—Bom. Act I of 1865, ss. 25 and 49—Bom. Reg. XVII of 1827, ss. 2 and 8.*——The jurisdiction of the Civil Courts, in the Presi- ... matters of revenue and land ...

The land ... The village of Kabilpur in the ... udhad budhijama village settled for hereditarily and of right by the co-sharers in it in the *gross* at a fixed immutable rent, independent of the quantity of land under cultivation, payable to Government, and as such falls, in respect of the joint liability of the holders for the revenue in gross, within s. 8 of Regulation XVII of 1827. The village of Kabilpur is land situated in a district ceded by the Peishwa in 1802 to the British, held by the *co-sharers* in it and their predecessors in title partially exempt from payment of land revenue, under a *tenure recognized* by the custom of the country, for more than thirty years, and therefore falls within the claims for exemption mentioned in Bombay Act VII of 1863, s. 21. Whether s. 2, cl. 1, and s. 8 of Regulation XVII of 1827, and s. 21 of Bombay Act VII of 1863 are or are not controlled by Bombay Act I of 1865, the village of Kabilpur is liable to assessment to the extent of R1,089-13-1 only, inasmuch as it falls within the concluding proviso in Bombay Act I of 1865, saving from further assessment a village entered in the land register as partially exempt from payment of land revenue. Comparison of this (the Kabilpur) case with that of Kanara—*Vyakunta Babuji v. Government of Bombay, 12 Bom., Ap., 1.* GOVERNMENT OF BOMBAY v. HARIBHAI MONBHAI
[12 Bom., Ap., 225

3. ———— Exemption from assessment—*Wanta or rent-free lands—Summary settlement—Bom. Act VII of 1863—Talukhdari settlement—Bom. Act VI of 1862—Right to hold wanta lands free.*—The lands in dispute, now forming part of the hamlets of Hirapur or Rasalpur, originally formed part of the talukhdari village of Kuwar. About the year 1843 the talukhdar mortgaged the lands to *P*, and two years afterwards, in order to pay off *P*, the talukhdar mortgaged the same lands to the plaintiff's father, and in or about 1858 gave him a deed of sale. On the passing of the Talukhdari Settlement Act (Bombay Act VI of 1862), the village of Kuwar was brought under its operation, and placed under Government management. While the village was under Government management, the Summary Settlement Act (Bombay Act VII of 1863) was passed, and the Talukhdari Settlement officer, acting apparently under s. 3 of the Act, made an order directing the plaintiff to pay assessment to the extent of R2,000. Part of the lands held by the ... entered in the Government khardas as ... to establish ... District ... prove that

LAND REVENUE—*continued.*

the lands were rent-free, and that he was liable to pay the assessment, and he therefore rejected the plaintiff's claim. *Held* on appeal that the Government was bound by the statements in its own khardas, which admitted that part of the land was wants, which must be regarded as meaning rent-free or tax-free land, and that it lay upon Government to prove that land so denominated was assessable, which it had failed to do, the plaintiff therefore, as to so much of the land as was entered in the Government khardas as wants, was entitled to hold it free of Government assessment. But as to the residue of the land in the hands of the plaintiff, and to which as against the talukhdar the plaintiff was entitled, the Court could

land revenue, the Civil Courts had no jurisdiction to regulate such assessment, even if, having regard to the value of the land, it were excessive. GULAM MOHIDIN *v.* COLLECTOR OF AHMEDABAD

[12 Bom., Ap., 276

See also GOVERNMENT OF BOMBAY *v.* SUNDARJI SAVRAM . . . . . 12 Bom., Ap., 275

4. ———— Mode of realization—*Bom. Reg. XVII of 1827, s 5—Bombay Survey Act (I of*

SADASHIV . . . . . I. L. R., 1 Bom., 70

5. ———— "Farmers"—*Bom. Reg. XVII*

raiyats as possessors of the ground. RUTTONJEE EDULJEE SHET *v.* COLLECTOR OF THANNA

[10 W. R., P. C., 13
11 Moore's I. A., 295

6. ———— Assessment of revenue—*Bom. Reg. XVII of 1821, s. 3—Right of Government to enhance—Foras or foras-toka land—Proof of right to hold at fixed rate.*—The plaintiff was the holder of certain land in the Island of Bombay, called foras or foras-toka land He and his predecessors in title had held the said land for upwards of sixty years, and had paid a certain fixed assessment to Government On the 31st July 1882, the Collector of Bombay, claiming to act under powers conferred by Bombay Act II of 1876 and under the order and with the sanction of Government contained in a Government Resolution, dated the 14th August 1879, gave notice to the plaintiff that the assessment payable in respect of the said lands was enhanced. He claimed the increased rent not merely for the future, but also for two previous years (1879-80 and 1880-81) subsequent to the date of the Government Resolution of the 14th August 1879. The plaintiff paid under protest, for the said two years, the sum of R412-8-2 in excess of his previous assessment, and now sued to recover that amount from the defendant. The plaint prayed for a declaration that there was "a right on the part of the plaintiff in limitation of the right of Govern-

to the enhanced rate of assessment from the time at which it was actually made by the Collector, and that he (the plaintiff) was therefore entitled to be

JIVANJI *v.* COLLECTOR OF BOMBAY

[I. L. R., 9 Bom., 483

LAND REVENUE—*concluded.*

LAND REVENUE ACT (BOMBAY).

See BOMBAY LAND REVENUE ACT (V OF 1879).

LAND TENURE IN BOMBAY.

———— *Real and chattel property—Husband and wife—Agreement by husband alone for renewal of lease—"Pension and tax"—Nature of Bombay land tenures—Fergusson's Act IX Geo. IV, c. 33—Act IX of 1837.*—Immoveable property situated in the Island of Bombay, conveyed in 1819 to N and his wife (Parsis), their heirs, executors, administrators, and assigns, was subsequently mortgaged by N and his wife, but the mortgagee did not

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876)—*concluded.*

regarded as a person who was "required" to be registered within the meaning of the section, as he could

ground for the dismissal of the suit. *Alimuddin Khan* v. *Hira Lall Sen, I. L. R., 23 Calc., 87*, and *Harekrishna Dass* v. *Brindabun Shaha, 1 C. W. N., 712*, followed BELCHAMBERS *v.* HASSAN ALLI MIRZA . . 2 C. W. N., 493

———— s. 89.

See LIMITATION ACT, 1877, ART. 14.
[I. L. R., 10 Calc., 525

See RELIEF . I. L. R., 10 Calc., 525

LAND REVENUE.

See CASES UNDER N.-W. P. LAND REVENUE ACT (XIX OF 1873).

See SETTLEMENT—CONSTRUCTION.
[I. L. R., 17 Bom., 407

1. ———— Liability of lands in Kanara district to revenue—*Maxim, "Nullum tempus occurrit regi."—Bom. Act VII of 1863, s. 21—Bom. Reg. XVII of 1827, ss. 4 and 7—Bom. Act I of 1865, ss. 25 and 49.*—The mulavargdar, a holder of land on muli tenure in Kanara, enjoys an hereditary and transferable property in the soil and cannot be ousted so long as he pays the land revenue assessed upon his land. In the absence of special terms to the

yatchi, the janmakari, the swasthyan, and the muli tenures mentioned. The rule of the Hindu and Mahomedan as well as the English law is *nullum tempus occurrit regi*. The extent to which that maxim has been restrained by legislation in the Presidency of Bombay considered. Construction of Bombay Act VII of 1863, s. 21, and Bombay Act I of 1865, ss 25 and 49. The revenue system of Akbar under Todar Mul and of Aurangzeb discussed. If there be no specific limit, either by grant, contract, or law, to the right of Government to assess land for the purpose of land revenue, the Civil Courts have no jurisdiction under Bombay Regulation XVII of 1827, ss 4 and 7, to entertain a suit to rectify the assessment made by the Collector or other competent Revenue authority. VYAKUNTA BAPUJI *v.* GOVERNMENT OF BOMBAY . . 12 Bom., Ap., 1

LAND REVENUE—*continued.*

2. ———— Liability to land revenue of village of Kabilpur in district of Surat—*Maxim "Nullum tempus occurrit regi"—Bom. Act VII of 1863, s. 21—Bom. Act I of 1865, ss. 25 and 49—Bom. Reg. XVII of 1827, ss. 2 and 8.*——The jurisdiction of the Civil Courts, in the Presidency of Bombay, in matters of revenue and land assessment considered and defined. The enactments

a fixed immutable rent, independent of the quantity of land under cultivation, payable to Government, and as such falls, in respect of the joint liability of the holders for the revenue in gross, within s. 8 of

ment of land revenue, under a tenure recognized by the custom of the country, for more than thirty years, and therefore falls within the claims for exemption mentioned in Bombay Act VII of 1863, s. 21. Whether s. 2, cl. 1, and s. 8 of Regulation XVII of 1827, and s. 21 of Bombay Act VII of 1863 are or are not controlled by Bombay Act I of 1865, the village of Kabilpur is liable to assessment to the extent of R1,089-13-1 only, inasmuch as it falls within the concluding proviso in Bombay Act I of 1865, saving from further assessment a village entered in the land register as partially exempt from payment of land revenue. Comparison of this (the Kabilpur) case with that of Kanara—*Vyakunta Babuji* v. *Government of Bombay, 12 Bom., Ap., 1*. GOVERNMENT OF BOMBAY *v.* HARIBHAI MONBHAI
[12 Bom., Ap., 225

3. ———— Exemption from assessment

deed of sale. On the passing of the Talukhdari Settlement Act (Bombay Act VI of 1862), the village of Kuwar was brought under its operation, and placed under Government management. While the village was under Government management, the Summary Settlement Act (Bombay Act VII of 1863) was passed, and the Talukhdari Settlement officer, acting apparently under s. 3 of the Act, made an

LAND REVENUE—*continued.*

the lands were rent-free, and that he was liable to pay the assessment, and he therefore rejected the plaintiff's claim. *Held* on appeal that the Government was bound by the statements in its own khardas, which admitted that part of the land was wanta, which must be regarded as meaning rent-free or tax-free [illegible]

of the land as was entered in the Government khardas as wanta, was entitled to hold it free of Government assessment. But as to the residue of the land in the hands of the plaintiff, and to which as against the talukhdar the plaintiff was entitled, the Court could not interfere with the rate of assessment fixed upon it by the Government. There not being any specific limit fixed by law, grant, sanad, contract, or otherwise, to the lassessment of that residue for the purpose of land revenue, the Civil Courts had no jurisdiction to regulate such assessment, even if, having regard to the value of the land, it were excessive. GULAM MOHIDIN *v.* COLLECTOR OF AHMEDABAD

[12 Bom., Ap., 276

See also GOVERNMENT OF BOMBAY *v.* SUNDARJI SAVRAM . . . . 12 Bom., Ap., 275

4. ———— Mode of realization—*Bom. Reg XVII of 1827, s. 5—Bombay Survey Act (I of* [illegible]

cannot be got rid of, except through its resignation by the Sovereign or the Sovereign's representatives *Held,* accordingly, that when the person, who was the "occupant" of certain land within the meaning of the Bombay Survey Act, failed to pay the revenue due thereon, the kabulatdar khot might recover the amount from that person's mortgagee in possession KRISHNAJI RAVJI GODBOLE *v.* RAMCHANDRA SADASHIV . . . I. L. R., 1 Bom., 70

5. ———— "Farmers"—*Bom. Reg. XVII of 1827.*—The word "farmer," as used in Regulation XVII of 1827, is used not as a cultivator of the ground, but as a farmer of public revenue, a person who would stand between the Government and the raiyats as possessors of the ground. RUTTONJEE EDULJEE SHET *v.* COLLECTOR OF THANNA

[10 W. R., P. C., 13
11 Moore's I. A., 295

6. ———— Assessment of revenue—*Bom. Reg. XVII of 1821, s. 3—Right of Government to enhance—Foras or foras-toka land—Proof of right to hold at fixed rate.*—The plaintiff was the holder of certain land in the Island of Bombay, called foras or foras-toka land. He and his predecessors in title had held the said land for upwards of sixty years, and had paid a certain fixed assessment to Government On the 31st July 1882, the Collector of Bombay, claiming to act under powers conferred by Bombay Act II of 1876 and under the order and with the sanction of Government contained in a Government Resolution, dated the 14th August 1879, gave notice to the plaintiff that the assessment payable in respect of the said lands was enhanced He claimed the increased rent not merely for the future, but also for two previous years (1879-80 and 1880-81) subsequent to the date of the Government Resolution of the 14th August 1879 The plaintiff paid under protest, for the said two years, the sum of R412-8-2 in excess of his previous assessment, and now sued to recover that amount from the defendant The plaint prayed for a declaration that there was "a right on the part of the plaintiff in limitation of the right of Government, in consequence of a specific limit to assessment having been established and preserved, in respect of the said lands, to possess and hold the same at the rent or assessment hitherto paid by the plaintiff, and that the Collector of Bombay had no right to increase the plaintiff's rent or assessment beyond such specific limit, and that the defendant should be ordered to repay to the plaintiff the said sum of R412-8-2." *Held* that no grant, contract, or law emanating from Government being proved to have emanated from Government conferring on the lands in question a right to a fixed and permanent rate of assessment, the assessment on these lands was liable to enhancement. *Held* also that the plaintiff was only liable to the enhanced rate of assessment from the time at which it was actually made by the Collector, and that he (the plaintiff) was therefore entitled to be [illegible]

assessment in respect of such lands. SHAPURJI JIVANJI *v.* COLLECTOR OF BOMBAY

[I. L. R., 9 Bom., 483

LAND REVENUE ACT (BOMBAY).

See BOMBAY LAND REVENUE ACT (V OF 1879).

LAND TENURE IN BOMBAY.

———— *Real and chattel property—Husband and wife—Agreement by husband alone for renewal of lease—"Pension and tax"—Nature of Bombay land tenures—Fergusson's Act IX Geo. IV, c. 33—Act IX of 1837.*—Immoveable property situated in the Island of Bombay, conveyed in 1839 to N and his wife (Parsis), their heirs, executors, administrators, and assigns, was subsequently mortgaged by N and his wife, but the mortgagee did not

LAND TENURE IN BOMBAY —*concluded.*

sary, under such circumstances, to consider whether the estate of *N* and his wife in the property was

and results of Governor Aungiers' convention stated, and the origin of "pension and tax" in Bombay traced. The tenure of land in Bombay under the

LAND TENURE IN CALCUTTA.

1. ———— Lands held in fee-simple—*Unattested will, Devise by.*—Lands in the East Indies held by a tenure of the nature of fee-simple do not pass by an unattested will, but descend to the

2. ———— Freehold land—*Unattested will, Devise by.*—The tenure of land in Calcutta was of the nature of freehold, and real estate would not therefore pass by an unattested will. FREEMAN *v* FAIRLIE . . . 1 Moore's I. A., 305

LAND TENURE IN KANARA.

1. ———— Liability to land revenue—*Maxim "Nullum tempus occurrit regi" considered.*—The mulavargdar, a holder of land on muli tenure

LAND TENURE IN KANARA—*continued.*

in Kanara, enjoys an hereditary and transferable property in the soil, and cannot be ousted so long as he pays the land revenue assessed upon his land. The

tenures mentioned The rule of Hindu and Mahomedan as well as of the English law is *nullum tempus occurrit regi.* The extent to which that maxim has been restrained by legislation in the Presidency of Bombay considered. VYAKUNTA BAPUJI *v.* GOVERNMENT OF BOMBAY . . . 12 Bom., Ap., 1

2. ———— *Nature of kumri cultivation—Kumri assessment—Rights of vargdars—Korlaya.*—The plaintiff sued to recover possession

certain sanads alleged to have been granted by the officers of Tippu Sultan to his ancestors; and as to the fourth, he claimed a title by prescription, alleging that the land had been in the possession of his family for forty years prior to 1870, the date of the institution of the suit. The plaint contained no indication of a claim which was put forward during the argument of the appeal, that the payment to the Government of assessment in respect of kumri,

the forests, but, subject to this, he contended that the timber, as the soil and produce of the forests generally, belonged to him, subject also to the

put forward were not proved to have been in fact executed by any person having authority to execute such documents, and that, even if genuine, they had never been recognized by the British Government

far at least as concerned the greater portion of the

LAND TENURE IN KANARA—*continued.*

property claimed, was an admission that at the date of those sanads the then Government had the power

"account," and it was only by an extension of the original meaning that it came to be used as indicating the property, to the assessment on which such account relates Kumri assessment was in its origin an assessment upon, or having reference to the ac-

assessment in the plaintiff's vargs and its payment for a long series of years did not show or manifest any estate or permanent right at all in the forests, as such, as being vested in the plaintiff, even as to such ground as he might have been able to show had been at former times kumried by his labourers, and whether or not the Government may have had, or, having had, may have ceased to have, any right to collect korlaya (tax on bill-hooks) direct from the

shown to be private property, on some other ground than the mere entry of kumri assessment in a particular varg or number of vargs The plaintiff's suit, therefore, which was to recover possession of particular tracts of forest on the ground of ownership, shown or evidenced only (apart from the question of the sanads) by such entry in his vargs of kumri assessment, was rightly dismissed. But even assuming that the plaintiff had established a right, exclusive of others and permanent as against the Government, to have kumri cultivation carried on in such places as he could show had theretofore been kumried by him or by his permission, or even throughout the limits claimed in the plaints, such

any, were disturbed, either by a stranger or by the Government, ought to have asserted it by a suit for damages for the disturbance of a right in *alieno solo*, and not by a suit to recover possession Even had the plaintiff therefore, established a per-

LAND TENURE IN KANARA—*continued.*

missed. That was the case he put forward to the last, and to which his evidence was directed, and it

lands belong to the State. The mere fact that a ...

sive assent of the Government passing its proprietary right to him. Such assent is not to be inferred, as to an extensive tract of forest, from the payment and receipt of some insignificant sum—*e.g.*, a moiety of

the occupation is to raise the presumption of a grant, or of acquiescence in a definite occupation. It is not inconsistent with this principle, but rather as complementary to it, that the farther rule is accepted, that the possession and the ownership springing from possession of a farm or varg as a whole, and within the limits as to which certainty is attainable, are not prevented or destroyed by an undoubted encroachment,

be no grant, no acquiescence in a possession, unless the essential elements of possession, a fixed, a definable, and an exclusive possession, exists, and are present to the perception of the parties. In the case of a private owner even the allowance of acts which

sented to or submitted to by some one having due authority, or else fortified by an equivalent law of prescription Under these conditions, a true ownership event of the forests might arise, but the mere payment of the kumri assessment would not create it in the case of a vargdar. Upon the evidence held that the sanads were not proved, nor had the plaintiff established any exclusive possession of, or proprietary right in, any part of the forest claimed; while the evidence showed a continued and consistent

LAND TENURE IN KANARA—*continued.*

exercise, on behalf of the Government, of its pro-

to the whole property, because his power over the whole was invaded and overthrown. Regarding the plaintiff's right, therefore, to land, to timber, to

tion or of its nature as temporary or permanent, as held on proprietary right, or as merely casual and precarious. It is the possibility of referring the exaction levied to some particular area, shown to

and admission of private ownership of the space thus rendered distinguishable. But private owner-

LAND TENURE IN KANARA—*continued.*

ship being established, it still remains true that a property in the soil must not be understood to convey the same rights in India as in England. It may be subject to restrictions and qualifications varying according to the peculiar laws of each country; and those acts which under one system would be necessarily regarded as contradictions of any ownership over the object on which they were exercised except that from which they spring may, under another system, be quite compatible with an ownership

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divided dominion. What the Government intend and practically intimated through its officers, constituted the bounds which it set to the plaintiff's acquisition through its acquiescence, both as to the extent of the rights to be exercised and the local limits within which they were to be exercised. As to the for

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ownership from 1812 downwards. As to the latter point, the evidence showed that the plaintiff's family as vargdars exercised rights over forest tracts in all the estates to which the present claim extended, though as to some of these tracts these rights could not be referred to any particular space. But, even though there had been no interference on the part of the Revenue officers with the plaintiff's free use of the forest, that free use without an exclusive appropriation would not in itself constitute an exclusive right against the State. The right arising from the State's eminent domain is not extinguished by its mere non-exercise, and its exercise was not called for until some public injury or inconvenience arose. The exercise of the plaintiff's dominion had been prevented, except within such limits as the executive officers prescribed, at any rate from 1842; while the ownership of the Government over the forest trees and its proprietary right in the soil had been during the same time at least uniformly asserted, and the plaintiff's suit was therefore barred by limitation. BHASKARAPPA *v.* COLLECTOR OF NORTH KANARA . I. L. R., 3 Bom., 452

3. ———————— *Mula-vargdars, Power of, to raise rent of mul-gainidar—Enhancement of assessment by Government—Power of State.*—

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defendant

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ment, and the local cess Plaintiff also claimed rent for one year. The plaint alleged that the assessment had been enhanced

denied having made any encroachment, and contended that the land, alleged to have been acquired

LAND TENURE IN KANARA—*concluded.*

by encroachment, had been included in the lease. Both the lower Courts allowed the plaintiff's claim with respect to the enhanced assessment and local cess, together with rent for one year. On an issue being sent to the District Judge by the High Court on second appeal, it was found that defendant was in possession of land other than that which he held under the lease, that he had acquired this other land by encroachment subsequently to the date of the lease; that both the lands were entered in the plaintiff's name in the Government survey, at which the assessment on the land originally demised to the defendant was raised to R36-12-0 (the original assessment being R12), while the land subsequently acquired by defendant was assessed at R5 *Held* that the plaintiff could not recover from the defendant any more than the rent reserved in the lease in respect to the land originally demised, but that he was subject to no such restriction in respect to the land subsequently acquired by encroachment. *Held* also that the defendant was liable for the local cess in respect of both the lands. It is not within the power of a Court of law, in the face of the contracts originally made between the mula-vargdars (superior holders) and their mul-gainidars (*permanent tenants*), *to relieve the former from the* hardship caused to them by reason of the enhancement, by Government, of the assessment on their lands to an amount exceeding or equal to the rent received by them (mula-vargdars) from the mul-gainidars It is doubtful whether Government, in its executive capacity, has any more power than Courts of law to interfere with contracts made between private persons. The remedy lies rather in the hands of the Legislature. RANGA *v.* SUBA HEGDE . . I. L. R., 4 Bom., 473

See also BABSHETTI *v.* VENKATARAMANA [I. L. R., 3 Bom., 154

and RAM KRISHNA KINE *v.* NARSHIVA SHANBOG [I. L. R., 4 Bom, 478 note

See RAM TUKOJI *v* GOPAL DHONDI [I. L. R., 17 Bom., 54

LAND TENURE IN ORISSA.

———— Maurasi sarvarakari tenure, The mode of succession to—*Consent of the zamindar to the transfer of tenure.*—The tenure known in Orissa as maurasi sarvarakari, although recorded in the name of a single member, is descendible to all the heirs as joint heritable property, and cannot be transferred without the consent of the zamindar. BHUBAN PARI *v.* SHAMANAND DEY [I. L. R., 11 Calc., 699

LAND TENURE IN SURAT.

———— Village of Kabilpur—*Maxim "Nullum tempus occurrit regi."*—The enactments limiting the operation in the Presidency of Bombay of the maxim *nullum tempus occurrit regi* considered. The land tenures of the district of Surat described. The village of Kabilpur in the district

LAND TENURE IN SURAT—*concluded.*

joint liability of the holders for the revenue within s. 8 of Regulation XVII of 1827 The village of Kabilpur is land situated in a district ceded by the Peishwa in 1802 to the British, held by the co-sharers in it and their predecessors in title partially exempt from payment of land revenue, under a tenure recognized by the custom of the country for more than thirty years, and therefore falls within the claims for exemption mentioned in Bombay Act VII of 1863, s. 21. GOVERNMENT OF BOMBAY *v.* HARIBHAI MONBHAI . 12 Bom., Ap., 225

LANDLORD AND TENANT.

LANDLORD AND TENANT—*continued.*

See Account, Suit for [I. L. R., 27 Calc., 663

See Acquiescence 7 B. L. R., 152
[8 B. L. R., Ap., 51
10 B. L. R., Ap., 5
I. L. R., 9 Calc., 609
I. L R., 14 All., 362
I. L. R., 25 Calc., 896
3 C. W. N., 255, 502
I. L. R., 21 All., 496; L. R., 26 I. A., 58
I. L. R., 27 Calc., 570: 4 C. W. N., 210

See Cases under Bengal Tenancy Act.

See Cases under Co-sharers.

See Cases under Estoppel—Landlord and Tenant—Denial of Title.

See Cases under Kabuliat.

See Cases under Lease, Construction of.

See Limitation—Question of Limitation . 7 W. R., 395
[18 W. R., 443
6 B. L. R., Ap., 130
7 B. L. R., Ap., 17
12 B. L. R., 274, 282 note, 283 note
I. L. R., 7 Bom., 96

See Limitation Act, 1877, s. 18
[I. L. R., 12 Bom., 501

See Cases under Limitation Act, 1877, art. 139.

See Cases under Madras Rent Recovery Act (VIII of 1865).

See Cases under Onus of Proof — Landlord and Tenant.

See Parties—Parties to Suits—Landlord and Tenant.

See Cases under Relinquishment of Tenure.

See Cases under Res Judicata—Competent Court—Revenue Courts.

See Small Cause Court, Presidency Towns — Jurisdiction — Moveable Property . I. L. R., 4 Calc., 946
[10 B. L. R., 448

See Small Cause Court—Presidency Towns — Jurisdiction — Immoveable Property, Recovery of.
[I. L. R., 10 Bom., 30
I. L. R., 17 Mad., 210

See Trespass—General Cases.
[23 W. R., Cr., 40
I. L. R., 2 Mad., 232

1. CONTRACT OF TENANCY, LAW GOVERNING.

1. ———— **Rules applicable to relation of landlord and tenant.**—The rules applicable [illegible]

[illegible] dhry . . . I. L. R., 4 Calc., 781

2. ————**Contracts of tenancy between Hindus in Calcutta**—*Stat. 21 Geo. III, c. 70, s. 17.*—A tenancy created by express contract between Hindus in Calcutta is within the words "matters of contract and dealing between party and party" in 21 Geo. III, c. 70, s. 17, and the right of the parties and the incidents of the tenancy must be governed by Hindu law. Russicklall Mudduck v. Lokenath Kurmokar
[I. L. R., 5 Calc., 688: 5 C. L. R., 492

2. CONSTITUTION OF RELATION.

(a) Generally.

3. ———— **Contract to pay rent**—*Omission to obtain kabuliat.*—Where two parties bind themselves under an indenture drawn up in the English form, the one to lease and the other to pay rent for certain land, the contract is complete, and a suit for arrears of rent due under it will lie under Act X of 1859, although no separate kabuliat is executed. Kishen Doss v. Hurry Jeebun Doss
[10 W. R., 324

4. ———— **Implied relationship of landlord and tenant**—*Absence of express condition*—Where *A* avowedly holds and cultivates *B*'s land, *A* is, by the universal custom of this country, *B*'s tenant (even without express permission to cultivate on [illegible]

[W. R., 1864, Act X, 82

[illegible]

LANDLORD AND TENANT—*continued.*

2. CONSTITUTION OF RELATION—*continued.*

Subsequently the lessor left, and the zamindar gave to the defendant a pottah for part of the lands covered by the modafut, and to the plaintiff a pottah for the whole land covered by the original modafut; but did not assign any of his rights as zamindar to the plaintiff to recover or enhance the rent reserved in the

[illegible]

[... B. L. R., A. C., ...]

S. C. KALLAM SHEIKH *v.* PANCHOO MUNDUL
[11 W. R., 128

6. ——— Grant retaining portion of land rent-free, but subject to house-tax—*Holders under sanad under Bom. Act VII of* [illegible]

[illegible]

ship of landlord and tenant between the parties. JESINGBHAI *v.* HATAJI . I. L. R., 4 Bom., 79

7. ——— Instrument not fixing permanent rent.—Where a written instrument purported to create the relation of landlord and tenant for five years, the lessor's tenure being that of a mirasidar, *i.e.*, a hereditary tenancy under Government determinable on default in payment of the pro-

[illegible]

[... Mad., ...]

8. ——— Payment of revenue by one co-sharer through another—*Interest—Act X*

[illegible]

[... May, ...]

9. ——— Decree for kabuliat—*Evidence of relationship of landlord and tenant.*—A decree which directs that a kabuliat shall be given by the defendant at a certain rent amounts to an adjudication that there is between the parties the relation of landlord and tenant, and is important evidence on that point in any subsequent suit against the same defendant. SHURUF JAN *v.* FUTTEH ALI
[23 W. R., 389

10. ——— Assessment after resumption—*Position of lakhirajdar after resumption.*—To create the relation of landlord and tenant between a zamindar and lakhirajdar after resumption, it is necessary for the zamindar to assess the rent The

[illegible]

BUNS BURHAL *v.* JOYKISHEN MOOKERJEE
[6 W. R., 92

BROJONATH DUTT *v.* JOYKISHEN MOOKERJEE
[4 W. R., 69

BHOOPAL CHUNDER BISWAS *v.* MAHOMED MOLLAH
[6 W. R., 286

11. ——— Decree declaring right to assessment—*Resumption of invalid lakhiraj—Beng. Reg II of 1819, s. 30—Beng. Reg XIX of 1793, s 10—Decree of Civil Court.*—A decree of a Civil Court in a suit (the plaint of which referred to s 30 of Regulation II of 1819 and s. 10 of Regulation XIX of 1793), which declared the right of the zamindar to assess rent on land not proved to have been held under a grant prior to 1st December 1790, was sufficient to establish the relationship of landlord and tenant between the zamindar and the party against whom the right of assessment was declared. SAUDAMINI DEBI *v.* SARUP CHANDRA ROY . 8 B. L. R., Ap, 82 : 17 W. R., 363

SHAMASUNDARI DEBI *v.* SITAL KHAN
[8 B. L. R., Ap., 85 note : 15 W. R., 474

MADHUSUDAN SAGORY *v.* NIPAL KHAN
[8 B. L. R., Ap, 87 note : 15 W. R., 440

ROHINI NANDAN GOSSAIN *v.* RATNESWAR KUNDU
[8 B. L. R., Ap., 89 note : 15 W. R., 345

12. ——— Decree for resumption—[illegible] *Beng. Reg. II of*

[illegible]

come into existence until the lakhirajdar had agreed to pay the revenue assessed by the Collector. MADHAB CHANDRA BHADORY *v.* MAHIMA CHANDRA MAZUMDAR
[8 B. L. R., Ap, 83 note : 12 W. R., 442

13. ——— Suit for arrears of rent as so determined for a period prior to such

LANDLORD AND TENANT—*continued.*

2. CONSTITUTION OF RELATION—*continued.*

determination—*Order of Settlement officer under N.-W. P. Land Revenue Act (XIX of 1873), s. 77, determining rent.*—An order of a Settlement officer

Prasad v. *Mathura, I. L. R., 8 All.,* 189, distinguished. DEBI SINGH *v.* JHANO KUAR

[I. L. R., 16 All., 208

14. ——— Position of occupiers in

lands in "suti" or other permanent tenure, or to re-grant on the same tenure lapsed suti lands, nor

4 Bom., A. C., 125

15 ——— Relationship depending on

adoption and had brought a suit to set it aside in

dismissed, it being found that the defendant was

16. ——— Assignment by tenant of goodwill, stock-in-trade, fixtures, furniture, and chattels—*Notice by landlord to lessee and to assignee to deliver up possession on expiration of lease or to pay rent—Holding over—Use and occupation—Liability of assignee for compensation for use and occupation* —*L* assigned to *D* the stock-in-trade, goodwill, fixtures, chattels, and premises in connection with a certain business carried on by him at the said premises which he held on lease from the plaintiff. The deed of assignment contained (*inter alia*) a provision empowering the assignee, in the event of any breach by *L* of the covenants contained in the said deed, to let the premises for any term or terms of years for such rent and under such covenants and conditions as *D* might think fit; and there was a further provision that *L* should not remove any of the stock-in-trade, chattels, etc, without the permission of *D*. Shortly before the expiration of the lease, the plaintiff served a notice

had durwans and a clerk on the premises to see that nothing was removed therefrom without his permission. *L* and *D* continued to keep the stock-in-trade on the premises after the determination of the

pass under the terms of the assignment to *D*, and that *D* was not liable to the plaintiff for compensation for the use and occupation of the premises. MADHUBMONEY DASSEE *v.* NUNDO LALL GUPTA

[I. L. R., 26 Calc., 338

(*b*) ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT.

17. ——— Right to recover rent, Establishment of—*Assessment—Agreement to pay rent.*—To establish a right to recover rent, a zamindar must show that either by assessment in due course of law or by agreement the tenant is liable to pay it. GAYASOODEEN *v.* KHUDA BUKSH

[1 N. W., 87: Ed. 1873, 139

KRISHNA GHOSE *v.* RAM NARAIN MOHAPATTUR

[25 W. R., 214

18. ——— Right to recover rent—

19. ——— *Purchase of land—Contract, express or implied, for payment of rent.*—*Held* that the plaintiff, not having been put into the possession of land purchased by him, and holding on contract, express or implied, from the holder of the land for payment of rent, was not competent to sue the defendant (occupant of the land) for rent thereof. RAM DASS SINGH *v.* RAM NARAIN

[2 Agra, Rev., 9

20. ——— Liability to pay rent—*Occupation after deprivation under decree.*—A party stripped by a decree or order of proprietary interest in land does not by mere subsequent occupation of it become vested with the character of a tenant, and therefore he is not liable to distraint for rent. He must have become a tenant by agreement or act of law to render him liable for rent. MUKURDHOOJ SINGH *v.* RAM CHURN

[1 N. W., 14: Ed. 1873, 12

LANDLORD AND TENANT—*continued.*

2. CONSTITUTION OF RELATION—*continued.*

21. ———— Implied contract to pay rent.—Under certain circumstances, a contract to pay rent to the zamindar on the part of the tenant will be implied, but no implication of a contract to pay rent to the zamindar on the part of the tenant can arise in a case in which the defendant has been paying rent to another zamindar than the one suing for a kabuliat. DIGAMBUR MITTER *v.* HURO-PERSHAD ROY CHOWDHRY . 7 W. R., 126

22. ———— Transferee of landlord—*Attornment, Necessity of.*—In a suit for rent where the defendant held under a lease from a party who subsequently gave a lease to plaintiff which gave him the right to collect rents from the defendant in accordance with the terms of the former (the defendant's) lease,—*Held* that no attornment was necessary, and that the relationship of landlord and tenant existed between the parties so that the suit could be instituted in a Revenue Court under the Rent Act. SREE CHAND *v.* BUDHOO SINGH [13 W. R., 301

23. ———— Ex-proprietary tenant—*Suit for arrears of rent—Determination of rent—Act XII of 1881 (N.-W. P. Rent Act), ss. 14, 95 cl. (l)—Act XIX of 1873 (N.-W. P. Land Revenue Act), s. 190.*—Except where there has been an arrangement or agreement between the parties, a landholder cannot sue his ex-proprietary tenant for

s 190 of Act XIX of 1873. PHULAHRA *v.* JEOLAL SINGH . . . . I. L. R., 6 All., 52

24. ———— Suit for arrears of rent

ment officer's order, as well as for the period subsequent thereto. The lower Appellate Court dismissed the claim for rent prior to the 1st July 1884, and decreed such as was due subsequently to that date, but without interest. *Held* that the Court could not decree any amount as arrears due until the rent payable had been fixed by private contract or by a competent Court; that, under s 77 of the N.-W. P.

LANDLORD AND TENANT—*continued.*

2. CONSTITUTION OF RELATION—*continued.*

dismissed. *Mahadeo Prasad v. Mathura, I. L. R. 8 All. 189*, distinguished. *Phulahra v. Jeolal Singh, I. L. R., 6 All., 52*, referred to. ... PRASAD SINGH *v.* JUGAL DAS

[I. L. R., 9 All., 19

25. ———— Extinguishment of proprietary right by partition—*Contract for payment of rent.*—Where a partition was made ...

rent was ..., the claim for arrears of rent ... not be decreed in the absence of express or implied contract for the same. ZALIM RAI *v.* D... RAI [1 Agra, Rev., 69

26. ———— Claim to rent—*Arrears of rent—Failure to prove liability to pay rent.*—A claim for arrears of rent cannot be sustained where the claimant fails to prove that rent has ever been paid. SHEO SAHAI *v.* ATA HOSSEIN [2 Agra, Rev., 10

See GUMANI KAZI *v.* HURRYHUR MOOKERJEE [B. L. R., Sup. Vol., 15

Or proves a contract to pay rent. LUCHMEEPUT DOSS *v.* ENAET ALI . . 22 W. R., 349

27. ———— *Assessment and determination of rate of rent—Rent-free lands.*—A suit for arrears of rent cannot be maintained in respect to rent-free land until the land has been assessed and the rate of rent determined. NOOR ALI *v.* IMTEAZOODEEN KHAN . 3 Agra, Rev., 2

28. ———— *Suit for arrears of rent—Non-payment of rent for long period—Allegation of rent-free tenure.*—A landlord cannot maintain a suit for arrears of rent where a claim to hold the land rent-free by some title of exemption is set up, and the question for enquiry in such a suit is not whether the land is or is not subject to assessment, but whether, referring to the circumstances under which rent has been withheld, the land can be regarded as rent-paying land The mere fact of the land being entered in the settlement papers as assessed, or that the annual papers contain entries, is not sufficient to justify a decree for arrears of rent. CHOONEELAL *v.* CHITOWLA . . . . 2 Agra, 197

29. ———— *Decree ...*

... period pre... retrospec...

... W. R., 338

30. ———— *Mortgagor after redemption and grantee of mortgagee.*—No such relation as that of landlord and tenant exists between a mortgagor (after redemption) and the grantee of the

LANDLORD AND TENANT—*continued.*

2. CONSTITUTION OF RELATION—*continued.*

determination—*Order of Settlement officer under N.-W. P. Land Revenue Act (XIX of 1873), s. 77, determining rent.*—An order of a Settlement officer under s. 77 of Act XIX of 1873 determining rent is a purely prospective order and will not entitle the landlord to sue his tenant for rent at the rate fixed thereby for any period antecedent to the 1st of July next following the date of such order. *Mahadeo Prasad v. Mathura, I. L. R., 8 All., 189,* distinguished. DEBI SINGH *v.* JHANO KUAR

[I. L. R., 16 All., 209

14. ——— Position of occupiers in

[illegible]

re-grant on the same tenure lapsed suti lands; nor

[illegible]

[4 Bom., A. C., 120

15. ——— Relationship depending

[illegible]

adoption and had brought a suit to set it aside in which he had failed, but had appealed to the Privy Council; that the plaintiff had not received rent for many years, and had brought a suit to eject the defendant and recover mesne profits which was dismissed, it being found that the defendant was

[illegible]

from the defendant. HURONATH ROY CHOWDHRY *v.* GOLUCKNATH CHOWDHRY . . 19 W. R., 18

16. ——— Assignment by tenant of goodwill, stock-in-trade, fixtures, furniture, and chattels—*Notice by landlord to lessee and to assignee to deliver up possession on expiration of lease or to pay rent—Holding over—Use and occupation—Liability of assignee for compensation for use and occupation.*—*L* assigned to *D* the stock-in-trade, goodwill, fixtures, chattels, and premises in connection with a certain business carried on by him at the said premises which he held on lease from the plaintiff. The deed of assignment contained (*inter alia*) a provision empowering the assignee, in the event of any breach by *L* of the covenants

[illegible]

remove any of the stock-in-trade, chattels, etc., without the permission of *D*. Shortly before the expiration of the lease, the plaintiff served a notice on *L* to deliver up possession of the premises on the

[illegible]

pass under the terms of the assignment to *D*, and that *D* was not liable to the plaintiff for compensation for the use and occupation of the premises. MADHUBMONEY DASSEE *v.* NUNDO LALL GUPTA

[I. L. R., 26 Calc., 338

(*b*) ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT.

17. ——— Right to recover rent, Establishment of—*Assessment—Agreement to pay*

[illegible]

[1 N. W., 87: Ed. 1873, 159

KRISHNA GHOSE *v.* RAM NARAIN MOHAPATTUR

[25 W. R., 214

18. ——— Right to recover rent—

[illegible]

19. ——— *Purchase of land—Contract, express or implied, for payment of rent.*—*Held* that the plaintiff, not having been put into the possession of land purchased by him, and holding on contract, express or implied, from the holder of the land for payment of rent, was not competent to sue the defendant (occupant of the land) for rent thereof. RAM DASS SINGH *v.* RAM NARAIN

[2 Agra, Rev., 9

20. ——— Liability to pay rent—*Occupation after deprivation under decree.*—A party stripped by a decree or order of proprietary interest in land does not by mere subsequent occupation of it become vested with the character of a tenant, and therefore he is not liable to distraint for rent. He must have become a tenant by agreement or act of law to render him liable for rent. MUKURDHOOJ SINGH *v.* RAM CHURN

[1 N. W., 14: Ed. 1873, 12

LANDLORD AND TENANT—*continued.*

2. CONSTITUTION OF RELATION—*continued.*

21. ———— **Implied contract to pay rent.**—Under certain circumstances, a contract to pay rent to the zamindar on the part of the tenant will be implied, but no implication of a contract to pay rent to the zamindar on the part of the tenant can arise in a case in which the defendant has been paying rent to another zamindar than the one suing for a kabuliat. DIGAMBUR MITTER *v.* HURO-PERSHAD ROY CHOWDHRY . 7 W. R., 126

22. ———— **Transferee of landlord**—*Attornment, Necessity of.*—In a suit for rent where the defendant held under a lease from a party who subsequently gave a lease to plaintiff which gave him the right to collect rents from the defendant in accordance with the terms of the former (the defendant's) lease,—*Held* that no attornment was necessary, and that the relationship of landlord and tenant existed between the parties so that the suit could be instituted in a Revenue Court under the Rent Act. SHEE CHAND *v.* BUDHOO SINGH

[13 W. R., 301

23. ———— **Ex-proprietary tenant**—*Suit for arrears of rent—Determination of rent—Act XII of 1881 (N.-W. P. Rent Act), ss. 14, 95 cl. (l)—Act XIX of 1873 (N.-W. P. Land Revenue Act), s 190.*—Except where there has been an arrangement or agreement between the parties, a landholder cannot sue his ex-proprietary tenant for rent until, as a condition precedent, he or the tenant

24. ———— **Suit for arrears of rent**

rate so fixed for a period antecedent to the Settle-

dismissed. *Mahadeo Prasad* v. *Mathura, I. L. R., 8 All. 189,* distinguished. *Phulahra* v. *Jeolal Singh, I. L. R., 6 All., 52,* referred to. RADHA PRASAD SINGH *v.* JUGAL DAS

[I. L. R., 9 All., 185

25. ———— **Extinguishment of proprietary right by partition**—*Contract for payment of rent.*—Where a partition was made and the proprietary right of one of the co-sharers in a portion which fell to another was consequently extinguished and he became a mere tenant,—*Held* that, though the rent was exigible, the claim for arrears of rent could not be decreed in the absence of express or implied contract for the same ZALIM RAI *v* DOORGA RAI

[1 Agra, Rev., 69

26. ———— **Claim to rent**—*Arrears of rent—Failure to prove liability to pay rent.*—A claim for arrears of rent cannot be sustained where the claimant fails to prove that rent has ever been paid. SHEO SAHAI *v.* ATA HOSSEIN

[2 Agra, Rev., 10

See GUMANI KAZI *v.* HURRYHUR MOOKERJEE

[B. L. R., Sup. Vol., 15

Or proves a contract to pay rent LUCHMEEPUT DOSS *v.* ENAET ALI . . . 22 W. R., 346

27. ———— *Assessment and determination of rate of rent—Rent-free lands.*—A suit for arrears of rent cannot be maintained in respect to rent-free land until the land has been assessed and the rate of rent determined. NOOR ALI *v* IMTEAZOODEEN KHAN . . 3 Agra, Rev., 2

28. ———— *Suit for arrears of rent—Non-payment of rent for long period—Allegation of rent-free tenure.*—A landlord cannot

29. ———— *Decree for kabuliat—Suit for arrears of rent previous to kabuliat.*—Where a party, after obtaining a decree establishing his title to land, sues for and gets a

[8 W. R., 338

30. ———— *Mortgagor after redemption and grantee of mortgagee.*—No such relation as that of landlord and tenant exists between a mortgagor (after redemption) and the grantee of the

LANDLORD AND TENANT—*continued.*

2. CONSTITUTION OF RELATION—*continued.*

mortgagee, and such mortgagor must establish his right to collect rent before he can sue to have the amount thereof ascertained. ADJOODHYA SINGH v. GIRDHAREE . . . . 2 N. W., 197

31. ———— *Purchaser of rent-paying tenure—Privity with zamindar.*—There is sufficient privity of estate between the purchaser of a rent-paying holding and the zamindar to entitle the latter to claim rent. KOLOO MISR v. BHYRO KULWAR . . . . 2 N. W., 258

32. ———— *Liability of heir of deceased lessee for rent—Mokurrari lease—*

33. ———— *Registered owner, Suit by, where the relationship of landlord and tenant is not shown to exist—Beng. Act VII of 1876, s. 78.*—The mere fact of a person being registered under the provisions of Bengal Act VII of 1876 as proprietor of the land in respect of which he seeks to recover rent is not sufficient to entitle him to sue for it. Where a landlord who was registered as owner of the land in respect of which he claimed rent sued the occupier for such rent, but

dismissed. RAMKRISTO DASS v. HARAIN [I. L. R., 9 Calc., 517 : 12 C. L. R., 141

34. ———— *Presumption of relationship of landlord and tenant.*—Where a

LALL MOOKERJEE v. MODHOO SOODUN CHOWDHRY [8 W. R., 474

35. ———— *Beng. Regs. V of 1799, s. 5, and V of 1827, s. 3—Sub-tenure taken*

COLLECTOR OF BOGRAH v. DWARKANATH BISWAS [4 B. L. R., Ap., 80 : 13 W. R., 194

36. ———— *Occupation by trespasser.*—Occupation by a trespasser does not create a claim to rent, though it may give grounds for an action for damages. BICHOOK PANDEY v. NARAIN DUTT . . 1 N. W., 26 : Ed. 1873, 24

LANDLORD AND TENANT—*continued.*

2. CONSTITUTION OF RELATION—*continued.*

37. ———— *Right of persons in possession under decree against person with subsequent decree for possession.—Attornment, Absence of.*—Where *A* and *B* were in possession of lands by virtue of a decree of Court, their tenants could not be called upon to pay rent to *C*, to whom they had not attorned, but who subsequently obtained a decree for the lands in suit, so long as no decree of Court had declared the title of *C* to be superior to that of *A* and *B*. *C*'s remedy in such case is an action against the persons who were wrongfully in possession for mesne profits, and not in a suit for rent against their tenants, who had in good faith dealt with the persons who were the ostensible proprietors in possession under a decree. Lands may be cultivated

enter on the land and look after the cultivation and harvesting of the crop, but if they did so, they could not be sued as tenants for rent. To render a person liable to pay as a tenant, it must be proved that he has by an express or implied agreement promised to pay rent, or that he has been assessed with rent in due course of law. MUNOHUR DOSS v. DEEN DYAL . . . . 3 N. W., 179

38. ———— *Liability for rent from use and occupation without registration.*—Parties in possession make themselves tenants by use and occupation, and may be sued for rent, even though not registered by the zamindar. LALUN MONEE v. SONA MONEE DABEE . . 22 W. R., 334

39. ———— *Suit for rent—Tenant settled on the land by a trespasser, Position of—Bengal Tenancy Act, s. 157.*—A suit was brought by the plaintiffs against a tenant for the entire rent, making the co-sharer landlords also defendants to the suit. The defence of the tenant, defendant No. 1, was denial of relationship of landlord and tenant, and payment to the co-sharer landlords. The co-sharer landlords *inter alia* pleaded that, as the tenant-defendant was settled on the land by them at a time when they were claiming to be entitled exclusively to the possession thereof, under a title derived from their auction purchase, they must be taken to have been trespassers on the land so far as the plaintiff's share was concerned, and that consequently defendant No. 1, who was settled

to claim rent for use and occupation from the defendant No. 1. *Nityanund Ghose v. Kissen Kishore, W. R. (1864), Act X, 82, Lalun Monee v. Sonamonee Dabee, 22 W. R., 334, Lukhee Kanto Doss Chowdhry v. Sumeeruddin Lusker, 13 B. L. R., 243 21 W. R., 208; Surnomoyee v. Dino Nath Gir, I. L. R., 9 Calc., 908; Binad Lal Pakrasi v.*

LANDLORD AND TENANT—*continued.*

2. CONSTITUTION OF RELATION—*continued.*

Kalu Pramanik, I. L. R., 20 Calc., 708, referred to. AZIM SIRDAR v. RAMLALL SHAHA [I. L. R., 25 Calc., 324

40. ———— *Person in possession of land served with notice to quit or pay rent and remaining.*—When a person is in possession of land without paying rent, and is served by the landlord, under whom he previously held, with notice that he must either quit or pay a reasonable rent, and chooses to remain in possession, he must be taken to have assented to become a tenant and is liable to pay rent. SREEGOPAUL MULLICK v. DWARKA NATH SEIN . . . . . . 15 W. R., 520

But *see* BURODA KANT ROY v. RADHA CHURN ROY . . . . . 13 W. R., 163

41. ———— Receipt of rent—*Ratification* ...

See NUBO KISHEN MOOKERJEE v. KALA CHAND MOOKERJEE . . . . . 15 W. R., 438

RAM GOBIND ROY v. DUSHOOBHOOJA DEBEE [18 W. R., 195

42. ———— *Transferee of intermediate tenure.*—Where rent is recovered without objection by successive landlords from the transferee of an intermediate tenure from the date of transfer, such receipt acts as a full and complete acknowledgment by the proprietor that he accepts the new tenant in the place of the old one. ALLENDER v. DWARKANATH ROY . . . 15 W. R., 320

43. ———— *Lease granted by trespasser—Ratification—Acceptance of rent—Transfer of Property Act (IV of 1882), s 107.*—Defendants held under a thika lease granted to them by *P*. In a suit which was subsequently brought against *P* by the vendor of the plaintiff, it was held that *P* had no title. The plaintiff's vendor had accepted rent from the defendants and showed by his conduct that he intended to consider himself bound by the terms of the lease and no new lease granted. *Held* that the lease was not binding on the plaintiff, and the question of ratification did not arise, inasmuch as neither the plaintiff nor his vendor was in any way privy to the lease which ...

to the provisions of s 107, Transfer of Property Act. LALA SHEO CHARAN LAL v. LALA PARBHOW DAYAL [1 C. W. N., 142

44. ———— *Bengal Tenancy Act (VIII of 1885), s. 157—Dismissal of former suit for rent.*—Plaintiff brought this suit to obtain a declaration that he had a right to the land in suit, and that the defendant No 1 was a korfa raiyat under him, and to recover khas possession upon ejectment of the defendant No 1, plaintiff had previously brought a suit for rent against the defendant No. 1, who in that suit denied the existence of the relationship of landlord and tenant between him and the plaintiff, and alleged that a third party, who was made a defendant in this suit, was his real landlord; the rent-suit having been dismissed, plaintiff brought the present suit, and in the course of the suit plaintiff withdrew the claim for ejectment and sought for a declaration of his title to the land and for recovery of rent from defendant No 1 *Held* by PRINSEP, ...

45. ———— *Creating new tenancy.*—The receipt of rent for 1268 by the landlord bars his right to eject the tenant for non-payment of rent due up to the end of 1267, the receipt for rent being an affirming of tenancy for that period. The receipt of rent for 1268 has the same effect as if the landlord had at the commencement of 1268 created a new tenancy PEERBUX v. MOWZAH ALLY W. R., F. B., 10 . 1 Ind. Jur., O. S., 7 [Marsh., 25 : 1 Hay, 89

46. ———— *Suing for* ...

[7 W. R., 250

47. ———— *Acknowledgment of nature of tenancy—Receipt of rent as from* ...

48. ———— *Permitting occupation of land and taking rent—Right to resume land so taken.*—By permitting a patnidar to take a quantity of land in addition to what is already held by him in patni, and by receiving rents from him for such additional land for a series of years, a proprietor cannot, in the absence of any kabuliat

LANDLORD AND TENANT—*continued.*

2. CONSTITUTION OF RELATION—*continued.*

from the patnidar or verbal agreement giving him the extra land in perpetual lease, be held to be debarred from resuming possession. KISHORE BULLUBH MITTER v. BISTOO CHUNDER GHOSE [12 W. R., 188

49. ———— *Acquiescence in*

not entitled to succeed. CHATOOR SINGH v. HEERA KOOER . . . . . 5 W. R., 191

50. ———— *Acceptance of*

51. ———— *Ratification of —Grant prior to Beng. Reg. V of 1812.*—The acceptance of rent for forty years ratifies the original grant of a mokurari pottah granted prior to Regulation V of 1812. UMBITHNATH CHOWDHRY v. KOONJ BEHARY SINGH . W. R., F. B., 34

52. ———— *Effect of acceptance of rent from tenant holding over—Renewal of tenancy.*—By indenture, dated 1st February 1856, *A* leased certain premises to *B* in Calcutta for a term of ten years from 1st November 1855 at a rent of R100 per month, payable monthly. *A* covenanted with *B* to grant her on request, to be made

B or by any one claiming through her. The plain-

term did not constitute a renewal of the lease for three years. BROJONAUTH MULLICK v. WESKINS [2 Ind. Jur., N. S., 183

53. ———— *Assent by zamindar to transfer of tenure.*—By accepting rent the zamindar assents to the transfer of a tenure, whether the whole is sold or a part only. BHARUT ROY v. GUNGANARAIN MOHAPATTUR . 14 W. R., 211

54. ———— *Alienation by cultivators—Acceptance of rent from alienee.*—Although in a mouzah cultivators may not possess the right of alienating their holdings, yet if, with a knowledge of such an alienation, the zamindar accepts rent from the alienee, he recognizes the alienee's position, and is as much bound as if he had expressly assented to the alienation. RUMMUN SINGH v. ESHREE PERSHAD . . . . 2 Agra, 144

55. ———— *Recognition of an under-tenure by the zamindar—Result of his*

dari made a grant of a patni tenure under it to a lessee at a rent. In this suit brought by the rever-

in a petition which accompanied the patnidar's deposit of the rent in a Court under the Bengal Tenancy Act (VIII of 1885), s. 61. This was *primâ*

56. ———— *Admission of status of purchaser from raiyats.*—*Held* that a zamindar, by taking the rent of the plaintiff's purchased lands after the rent was deposited by him in the Collector's treasury, virtually admitted the plaintiff's

57. ———— *Transfer of tenure—Acceptance of rent from transferee.*—Where a tenure is transferred by a raiyat without sanction of his landlord, and the latter nevertheless receives rent from the transferee, and gives him dakhilas *for the year in which he is in possession,* the landlord cannot oust him afterwards under a decree for the rent of previous years. ABDOOL KUREEM v. MUNSOOR ALI . 12 W. R., 393

58. ———— *Purchaser at sale in execution of decree—Leases made after decree.*—The purchaser at a sale in execution of a decree obtained by a mortgagee in satisfaction of his mortgage-debt is not bound by leases executed by the mortgagor after decree, unless he has recognized the leases after his purchase by receiving rent

LANDLORD AND TENANT—*continued.*

2. CONSTITUTION OF RELATION—*concluded.*

from the lessees as such HUNOOMAN DOSS v. KOOMEROONISSA BEGUM
[W. R., F. B., 40: 1 Ind. Jur., O. S., 42

S. C. KOOMEROONISSA BEGUM v. HUNOOMAN DOSS . . . Marsh., 122: 1 Hay, 266

59. ———— *Evidence of confirmation of tenure—Giving receipts for rent.*—The giving of receipts for rent, coupled with the fact of payment of rent at the old rate down to the present time, is evidence of confirmation of the tenure by the auction purchaser and his successor. TARA CHAND DUTT v. WAKENOONISSA BIBEE
[7 W. R., 91

60. ———— *Lease by naib of zamindar—Transfer of tenure.*—When a zamindar dispossessed the purchaser of a jungleboory tenure, the title of whose vendor was acquired from the

zamindar is not bound to recognize tenures not created by himself or by any authorized agent on his part. BISSUMBHUR POORKAET v. BHUGGOBUTTY CHURN POORKAET . . W. R., 1864, 292

3. OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION.

61. ———— Presumption of ability to give possession—When a zamindar gives a lease, the presumption is that he is in a position to give possession of the property leased DONZELLE v. TEK NARAIN SINGH . . 2 W. R., Act X, 103

62. ———— Implied contract for possession—*Peaceable possession.*—In every agreement to lease land there is an implied contract that the lessor will give peaceable possession of the land leased to the lessee. MUNEE DUTT SINGH v. CAMPBELL . . . . . 11 W. R., 278

Affirmed on review . . . 12 W. R., 149

63. ———— Lessee without possession—*Right to rent—Condition precedent.*—A landlord cannot claim rent under a kabuliat where the lessee has never obtained possession, delivery of possession being ordinarily a condition necessary for the maintenance of an action for rent. HURISH CHUNDER KOONDOO v. MOHINEE MOHUN MITTER
[9 W. R., 582

ASHRUFOONISSA BEGUM v. TOSUDDUCK HOSSEIN
[22 W. R., 260

64. ———— Right of tenant to be continued in quiet possession—*Right to rent.*—The right of a landlord to receive rent from a farmer depends upon his securing to the latter quiet possession, and giving him proper and lawful means of realizing rents from the tenants. KRISTO SOONDUR SANDYAL v. CHUNDER NATH ROY
[15 W. R., 230

LANDLORD AND TENANT—*continued.*

3. OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION—*continued.*

65. ———— Possession not obtained by [illegible]

[illegible] L. R., Ap., 119

66. ———— Lessee kept out of possession—*Right to rent—Dispossession by or through landlord.*—A suit for rent will not lie unless the relation of landlord and tenant be established, and a tenant cannot be made liable for rent if it be established that he has been kept out of the possession of the tenure by the landlord. ABDOOL GUNNEE v. KHERODE CHUNDER ROY . 2 Hay, 400

ABDOOL GUNNEE v. POORNO CHUNDER ROY
[2 Hay, 524

67. ———— Dispossession of tenant—*Obligation of landlord to indemnify tenant.*—In the absence of any express agreement to the contrary, a landlord is under the implied obligation to indemnify his tenant against ouster or disturbance of possession by his own act, or by the acts of those who claim under him, or have a right paramount to his, but not against the wrongful acts of third parties. RASSAM v DONZELLE . 23 W. R., 121

68. ———— Implied covenant for quiet enjoyment—*Interruption of tenant's enjoyment by order of plague officials—Suit for rent*—A lessor sued to recover from his lessee rent for fifteen months from 1st August 1897 to 31st October 1898, under an agreement for lease for ten years dated 1st September 1890, *i.e.*, prior to the application of the Transfer of Property Act [illegible]

[illegible] L. R., [illegible] Bom., 510

69. ———— Failure to give possession—*Agreement to give lease—Procedure by tenant*—When consideration-money has been paid for a patni lease with a view to khas possession, and such possession is not obtained [illegible] to repudi[illegible] diately [illegible] PAUL CH[illegible]

70. ———— Lease given without authority and afterwards set aside—*Liability*

LANDLORD AND TENANT—*continued.*

3. OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION —*concluded.*

for rent after dispossession—Where a lease was granted by a Deputy Collector without authority, and his act set aside by the Collector, the tenant, who was turned out of possession without any beneficial occupation for the short period of his lease, was held not to be liable for rent. KALEE DOSS BANERJEE *v.* NUBEEN CHUNDER CHATTERJEE [24 W. R., 91

71. ———— Dispossession by stranger

72. ———— Failure of lessor to protect possession of lessee—*Liability for rent—Dispossession.*—If a lessor fails by remissness to do that which he alone can do to protect his lessee in possession, even independently of any protective provision in the lease, he cannot claim rent from the lessee in respect of the portion of the property from which the latter has been evicted. WAJED ALI *v.* CHUNDRABUTTY KOOEREE . . 22 W. R., 542

73. ———— Disturbance by landlord of peaceable possession—*Suspension and appor-*

to a suspension of rent during such interference, even though there may not be actual eviction. If such interference be committed in respect of even of a portion of the property, there should be no apportionment of rent where the whole rent is equally chargeable upon every part of the land demised. But if the interference is in respect of only a certain portion of ... is separately DHUNPUT

... Calc., 296

74. ———— Failure to keep tenant in entire possession—*Surrender by tenant on being partly dispossessed—Liability for rent.*—Where a plaintiff brought a suit to recover the rents of some lands which he had leased out to defendant, but defendant pleaded that he had relinquished the lands because, in a suit brought against him by a third party, who claimed a portion of the lands, a decree had given the said party possession of the portion ... r de- ... see- ... l, and been put in possession of all the land covered by his lease,—*Held* that defendant was right in submitting to the decree of a Court of competent jurisdiction; that he could not be expected to content himself with the

LANDLORD AND TENANT—*continued.*

4. OBLIGATION OF TENANT TO KEEP HOLDING DISTINCT.

75. ———— Confusion of boundaries—

have been confounded equal in value to the land demised. DUGAPPA CHETTI *v.* VIDHIA PURNA TIRTHASAMI . . I. L. R., 6 Mad., 263

DOORGA KANT MOZOOMDAR *v.* BISHESHUR DUTT CHOWDHRY . . W. R., 1864, Act X, 44

76. ———— *Interference of Civil Court to fix them.*—In equity, if through the default of a tenant or a copy-holder, who is

a manner that the produce of the total land in each talukh should bear the same proportion to the jama payable by such talukh as the produce of the whole of the said lands bore to the total of the jamas payable on account of the three talukhs. KHEMAMOYEE *alias* KHEMESSUREE DEBIA *v.* SHOSHEE BHOOSUN GANGOOLY . . . . . 9 W. R., 95

77. ———— Obliteration of boundary-marks by cultivation—*Effect of, on claim to rent.*—A claim to rent for certain land must not be dismissed merely because the defendant, by planting indigo, has obliterated the boundary-mark of that land. It must be ascertained who, by previous enjoyment, is entitled to receive the rents of the land, if the plaintiff is not so entitled. BROJONATH ROY *v.* GILMORE . . . . 2 W. R., Act X, 48

78. ———— Tenant allowing encroachment on tenure—*Obligation of lessee to avoid dispossession or encroachment on lessor's property.*—It is a general principle of law that it is incumbent upon every lessee to protect his lessor's property from encroachment or unlawful eviction, and that, if he fails to do so, he exposes himself to an action for damages by his landlord. PROSUNNO MOYI DASI *v.* KALI DAS ROY . . . 9 C. L. R., 347

5. LIABILITY FOR RENT.

79. ———— Proof of liability—*Production and proof of kabuliat.*—The production of a

80. ———— Non-completion of contract—*Mad. Regs XXX of 1802, s. 6, and V of 1822,*

LANDLORD AND TENANT—*continued.*

5. LIABILITY FOR RENT—*continued.*

s. 9.—Where no pottahs and muchalkas have been exchanged between the parties, occupants of lands ... 1802, ... for its ... plain- ... ALANAGANDA . . . . 1 Mad., 3

81. ——— Interruption of tenancy—*Interruption of occupation by landlord*—No subsequent interruption by *A* in *B's* occupation and enjoyment of land would be an answer to *A's* claim for rent which had previously accrued. *B's* eviction by *A* will not relieve him from liability for rent which accrued due prior to the eviction MADHUB CHUNDER MOZOOMDAR *v.* SIDHEE NUZEER ALI KHAN . . . . . 8 W. R., 54

82. ——— *Dispossession of tenant in middle of year—Right to rent accrued due on interruption of occupation.*—A landlord, by dispossessing his tenant in the middle of the year, does not, in all cases, forfeit his right to rents which have already accrued due. Whether he does or not must depend on circumstances, *e.g.*, upon the question whether the raiyat has enjoyed all the year's profits, or has been prevented from enjoying any by the landlord's act of interference. BUNSEE DHUR GHOSE *v.* BHEEM LALL SAHOO . 24 W. R., 219

83. ——— *Dispossession, and recovery of mesne profits for.*—In a suit for rent in which defendant pleaded that during the period for which rent was claimed the tenants had been out of possession of the land, having been ousted by a third party to whom the zamindars (plaintiffs) had given a lease of the land,—*Held* that the zamindars were precluded from suing defendants for rent on account of such period, even though the latter had recovered a decree with wasilat for the period of dispossession. KADUMBINEE DOSSIA *v.* KASHEENAUTH BISWAS . . . . . 13 W. R., 338

84 ...

defendants a cause of action against them for damages CHUNDER NATH BHUTTACHARJEE *v.* JUGGUT CHUNDER BHUTTACHARJEE . 22 W. R., 337

85. ——— *Rent after loss of possession—Ejectment by zamindar*—A zur-i-peshgidar cannot compel his lessees to pay rent when both he and they are evicted by the zamindar. BISHEN DYAL SINGH *v.* PROBHOO DASS 1 W. R., 1

86. ——— Assignment of right to recover rent—*Subsequent suit for arrears of rent.*—A tenant was authorized by his landlord to pay a certain portion of his rent to *T*, a creditor of the landlord. *T* afterwards obtained a decree against

LANDLORD AND TENANT—*continued.*

5 LIABILITY FOR RENT—*continued.*

...

87. ——— Rent paid to some one else ...

landlord cannot again claim rent unless he shows how or when the relation revived. MUDDUN MOHUN ROY CHOWDHRY *v.* CHUNDER SEKHUR BHUTTACHARJEE . . . . 25 W. R., 115

88. ——— Rent between date fixed for leaving and actual previous departure.—Where there were no terms of agreement settled ...

[9 W. R., 213

89. ——— Purchaser of house—*Notice of rate of rent—Liability of tenant at fixed rent.*—Where the right, title, and interest of the owner of a house are purchased at a sale in execution, and the ...

[10 W. R., 251

90. ——— Auction-purchaser of orchard from zamindar—*Orchard included in* ...

91. ——— Purchaser in execution of decree—*Payment for period subsequent to purchase—Notice.*—An auction-purchaser, with notice of a payment in advance, made by the tenant to the former proprietors of rent due for a period subsequent

LANDLORD AND TENANT—*continued.*

5. LIABILITY FOR RENT—*continued.*

to the date of purchase, is bound by such payment. RAM LALL SHAW *v.* JOGGENDRO NARAIN ROY [18 W. R., 328

92 ———— **Purchaser of a portion of tenure, whether liable for rent before date of purchase**—*Joint liability of purchaser of a fraction of a tenure.*—A purchaser of a tenure is not personally liable for its rent which fell due before the date of purchase, although the tenure may be liable for such rent *Rash Behary Bandopadhya* v *Peary Mohun Mookerjee, I. L. R., 4 Calc., 346,* followed. *Chatraput Singh* v. *Girindra Chunder Roy, I. L. R., 6 Calc , 389,* and *Moharanee Dasya* v. *Harendra Lal Roy, 1 C. W. N., 458,* distinguished. The transferree of a part of a tenure is jointly liable with his co-sharer for the whole rent, for although the privity between the parties may be one of estate only, it is in respect of the whole of the tenure, though the transfer was of a part, by reason of the indivisibility of the tenure without the landlord's consent. The fact of the lease being for a [illegible]

[illegible] *moni Dutt* v *Rash Behari Mondul, I. L. R., 19 Calc , 17 ,* and *Sourindra Mohun Tagore* v. *Surnomoyi, I. L. R., 26 Calc , 103,* referred to. JOGEMAYA DASSI *v.* GIRINDRA NATH MUKERJEE [4 C. W. N., 590

93. ———— **Purchaser of specific share** [illegible]

94. ———— **Suit for balance of amount of decree against one tenant only**—*Success-* [illegible]

95. ———— **Assessment of rent**—*Land covered with trees—Act X of 1859, s. 23, cl. 1.*—*Held* that the defendants, whose proprietary title at the time of settlement was recognized in the land then covered with trees, were not liable to assessment by zamindars, under the provisions of cl. 1, s. 23 Act X of 1859, on account of the trees having since disappeared and the land having been brought into cultivation. JADOO RAI *v.* MAHOMED TUQUEE [1 Agra, Rev., 24

See MOOSEY KHULEEEY *v.* MAHOMED TUQUEE [1 Agra, Rev., 3

96. ———— **Misrepresentation by landlord**—*Cross-suit.*—A plea that the defendant was deceived into taking a lease by the misrepresentation of the plaintiff cannot be pleaded as an answer to an action for rent. Such a defence should be made the subject of a cross-suit. ISHREE PERSHAD RAE *v.* BEHAREE LAL . . . 2 N. W., 243

97. ———— **Liability of the transferee of a fractional share of patni to pay rent**—*Reg. VIII of 1819, s. 6—Personal liability of patnidar for rent, notwithstanding a stipulation in the patni lease that arrears of rent should be realized by auction sale of the patni—Bengal Tenancy Act (VIII of 1885), s. 65.*—Although [illegible]

[illegible] tenant, if the landlord chooses to recognize him as one of the joint holders of the patni, and he is also liable for the entire rent of the patni estate Notwithstanding a stipulation in the patni lease that on default of any instalment of rent the landlord shall [illegible]

[illegible] TAGORE *v.* SURNOMOYI . I. L. R., 26 Calc., 103 [3 C. W. N., 33

98. ———— **Failure to pay Government assessment**—*Land Revenue Code (Bom. Act V of 1879), ss. 56, 57, 81, 214 (e) and (i)—Lease—Forfeiture—Payment of the arrears by tenant actually in possession—Forfeiture not followed by sale of occupancy—Lease not destroyed by the forfeiture—Tenant's liability for rent subsequent to the forfeiture.*—A registered occupant of land having failed to pay the arrears of Government revenue, his occupancy was forfeited under s. 56 of the Land Revenue Code (Bombay Act V of 1879), but the forfeiture was not followed by sale of the occupancy, the Collector having allowed the registered occupant's [illegible]

[illegible] liable. When a registered occupant's tenancy is forfeited under s. 56 of the Land Revenue Code, and that forfeiture is not followed by sale of the occupancy (the Collector allowing the person actually in possession to be registered as occupant on his paying up all arrears of Government revenue due on the

LANDLORD AND TENANT—*continued.*

5. LIABILITY FOR RENT—*continued.*

landl the lease by which the ...

[I. L. R., 24 Bom., 34

99. — — **Occupancy-raiyat dying intestate**—*Liability of the heirs of a deceased occupancy-raiyat to pay rent—Surrender of holding—Bengal Tenancy Act (VIII of 1885), ss. 5, 26, and 86*—The heirs of an occupancy-raiyat, dying intestate, are liable to pay rent, whether they occupy the land or not, until they surrender the holding in the manner prescribed by s 86 of the Bengal Tenancy Act, 1885. PEARY MOHUN MOOKERJEE *v.* KUMARIS CHUNDER SIRKAR

[I. L. R., 19 Calc., 790

100. ———— **Occupancy-tenant**—*Liability of holder of right of occupancy for arrears of rent which accrued in lifetime of his predecessor.*—An occupancy-tenant in possession who has accepted the occupancy-holding is liable to be sued for arrears of rent, not barred by limitation, which accrued in the lifetime of the person from whom the right of occupancy has devolved on him. LEKHRAJ SINGH *v.* RAI SINGH I. L. R., 14 All., 381

101. ———— **Lease to one partner on behalf of himself and his co-partners**—*Suit for rent—Making co-partners parties—Use and occupation.*—When one partner *A* takes a lease of premises in his own name, though on behalf of the partnership, and with the assent of his partners *B* and *C*, *B* and *C* are not liable to be sued by the lessor for the rent reserved by the lease. A lease is not a mere contract; it is a conveyance, and effects a transfer of property. The lessee can only be the person named in the lease. If that person becomes a lessee on behalf of some one else—as he may do—the law regards him as a trustee for that other person, and does not consider that other person as the lessee, since there is no demise or conveyance to him. The covenant to pay rent may be made on behalf of another ...

the foundation of a claim for use and occupation was necessarily wanting. RAGOONATHDAS GOPALDAS *v.* MORARJI JUTHA I. L. R., 16 Bom., 568

102. ...

... Official Liquidator, with the sanction of the Court, sold the remainder of a lease for a long term of years, reserving a rent, which was held by the company. No written assignment was ever executed, but the Official Liquidator handed over the lease to the purchaser, who entered into possession In a suit ...

1882), the defendant, even if not liable as assignee in law of the lease, was liable for rent as for the use and occupation, and under such circumstances the rent fixed by the lease would be a fair basis for the amount to be decreed. GAYA PRASAD *v.* BAIJ NATH . . . . I. L. R., 14 All., 176

103. ———— **Liability of agent for rent**—*Honorary secretary to a school maintained by a foreign society.*—The plaintiff sued the defendant to recover possession of a certain house in Bombay and for arrears of rent. The defendant pleaded that the house in question was ...

... that the defendant was liable for the rent. There was nothing to show that the contract for the house was made on the personal credit of any one except the defendant. BHOJABHAI ALLARAKHIA *v.* HAYEM SAMUEL . . I. L. R., 22 Bom., 754

104. ———— **Liability of purchaser of khasgi (private or personal) land of a khoti sharer**—*Mortgage of the khoti takshim (share) ...*

the revenue—Agreement coming to an end with the extinction of the equity of redemption.—*Primâ facie* all land not shown to be alienated is liable to assessment, and the mere fact that no revenue was paid by a khoti co-sharer in respect of khasgi (private or personal) land in his occupation is not sufficient to prove its exemption from liability when it has passed into the hands of a stranger. One *S*, a sharer in a khoti village, mortgaged his khasgi land appertaining to his share in the khoti to the plaintiff, and undertook to pay the Government dues on it. Plaintiff got a decree on his mortgage, and in execution the land was sold, and purchased by defendant in the year 1878 In the year 1881, the khoti sharers effected partition. In 1883 defendant took possession of the land. In 1884, and again in 1885, *S* having mortgaged his takshim (share), including the khasgi land to plaintiff, the latter as mortgagee brought a suit to recover makta (fixed) rent in kind payable for the khasgi land purchased by the defendant *Held* that, as the partition between the khoti ...

LANDLORD AND TENANT—*continued.*

5. LIABILITY FOR RENT—*continued.*

equity of redemption by the Court-sale. BALKRISHNA MHADSHET v. VISHVANATH KESHAV JOG [I. L. R., 19 Bom., 528

105. ———— Suit for arrears of rent—*Dispossession by landlord—Limitation—Cause of action—Mesne profits, Refund of.*—*M*, having been dispossessed by the landlords from a raiyati holding purchased by him, brought an action and obtained a decree for possession and mesne profits. *M* obtained delivery of possession in execution of decree in 1891, and in 1892 mesne profits for the years 1295 (1887-88) to the Bhadui season of 1299 (1891-92) were awarded to him At the time of the ascertainment of mesne profits, the landlords claimed to set off the rent against each year's profits, but they were referred to a separate suit, and set-off was not allowed The present suit for refund of profits or rent for the period aforesaid was brought in August 1892, and one of the objections raised was that the claim to the rents of 1295 and 1296 was barred by limitation. The plaint alleged that the cause of action accrued upon the date of ascertainment of profits and the rejection of the claim to set-off in 1892, and it was urged that at all events it did not accrue before delivery of possession in 1891 *Held* that the objection was valid and the claim to the rents in question was barred by limitation. *Swarnamayi* v. *Shashi Mukhi Barmani, 2 B. L. R., P. C., 60 · 11 W. R., P. C., 5 12 Moore's I. A., 244,* and *Din Dayal Paramanik* v. *Radha Kishori Debi, 8 B. L. R., 536 17 W. R, 415,* distinguished *Kadumbinee Dossia* v. *Kashinath Biswas, 13 W. R., 338,* followed. *Eshan Chunder Roy* v. *Khajah Assanoollah, 16 W. R., 79,* and *Huro Pershad Roy Chowdhry* v. *Gopal Das Dutt, L. R., 9 I. A., 82 I. L. R., 9 Calc., 255,* referred to. MAHOMED MAJID v. MAHOMED ASHAN [I. L. R., 23 Calc., 205

106. ———— Liability of representatives—*Suit to recover arrears of rent from representatives of tenant at fixed rates.*—*Held* that

over the tenancy of the deceased themselves. *Lekhraj Singh* v. *Rai Singh, I L. R., 14 All., 381,* referred to. MAHARAJA OF BENARES v. DALJIT SINGH . . . . I. L. R., 19 All., 352

107. ———— Suit for rent by unregistered proprietor—*Beng. Act VII of 1876, s 78—Application for registration as proprietor.*—S. 78 of the Land Registration Act, 1876, precludes a person claiming as proprietor from suing a tenant for rent until his name has been actually registered as such under the Act. A mere application to be registered is not sufficient for the purpose. SURYA KANT ACHARYA BAHADUR v. HEMANT KUMARI DEVI [I. L. R., 16 Calc., 706

DHORONIDHUR SEN v. WAJIDUNNISSA KHATOON [I. L. R., 16 Calc., 708 note

6. RENT IN KIND

108. ———— Suit for share of rent or money-equivalent—*Valuation of crop.*—A landlord sued his tenant, paying rent in kind, for the share of the crop due to him, or rent, or for its money-equivalent *Held* that the prices at which the landlord was entitled to have the crop valued were those which prevailed at the time the crop was cut, and when it should have been made over to him. LACHMAN PRASAD v. HOLAS MAHTOON [2 B. L. R., Ap., 27 : 11 W. R., 151

109. ———— Rent in kind, Demand for

contract, although the tenant has paid rent in money for some years. SOHOBUT ALI v. ABDOOL ALI [3 C. W. N., 151

7 TENANCY FOR IMMORAL PURPOSE.

110. ———— Lodgings let to prostitute—*Suit for rent of.*—A landlord cannot recover the rent of lodgings knowingly let to a prostitute who carries on her vocation there GAURINATH MOOKERJEE v. MADHUMANI PESHKAR . 9 B. L. R., Ap., 37

S. C. GOUREENATH MOOKERJEE v. MODHOOMONEE PESHAKUR . . . . 18 W. R., 445

8 PAYMENT OF RENT.

(a) GENERALLY.

111. ———— Payment to co-lessors after distress—*Claim for rent—8 Anne, c. 14—Dis-*

ments to each of the two owners respectively, they giving separate receipts for the same. The tenant

to her paid out of the proceeds realized by the sale under the decree. *Held* that she was not entitled to have it so paid. *Held* also *per* PEACOCK, C J.—The Stat 8 Anne, c. 14, does not apply to this

LANDLORD AND TENANT—*continued.*

8. PAYMENT OF RENT—*continued.*

country. *Held* that it would not, at any rate, apply to a case in which a claimant seeks to enforce payment of her rent from another creditor for rent, even if it would where the claim was against an ordinary execution-creditor. PADAMANI DASI *v.* JAGADAMBA DASI [3 B. L. R., O. C., 56

112. ———— **Payment to superior landlord after grant of intermediate lease**—*Payment without notice of assignment—Liability to intermediate tenant.*—A tenant paying rent to the superior landlord, after the grant of an intermediate lease, but without notice of it, is not liable to the intermediate lessee in respect of the same rent ATTAPYEE MOWLAH *v.* SUKHAWUT ALLY [Marsh., 103: W. R., F. B., 30: 1 Hay, 240

113. ———— **Payment to a third person by landlord's directions**—*Plea of payment.*—Payment by a tenant under the landlord's directions to another, or for a special purpose, of a sum equivalent to the amount claimed as rent, is tantamount to a payment to the landlord himself, and is a sufficient answer to the landlord's suit for rent. Such a defence, being rather one of payment than of a set-off, was open to a defendant in a suit under Act X of 1859 JOY KOOER *v.* FURLONG . W. R., 1864, Act X, 112

114. ———— **Payment by tenant of revenue to save estate from sale**—*Payment or set off in suit for rent.*—Where a tenant is left in that condition in which he is compelled to pay his landlord's debt to save his own security from forfeiture, the circumstances constitute a sufficient authority to

[15 W. R., 545

115. ———— **Presumption of payment of rent for former years**—*Suit for rent of current year—Beng. Reg VII of 1799.*—Under Regulation VII of 1799, a plaintiff could only sue for and recover the rent of the current year No legal presumption arose from his doing so that the rent of prior years had been satisfied MIRTHERJEET SINGH *v.* CHOKER NARAIN SINGH . . . 2 W. R, 58

116. ———— **Presumption of payment of rent**—*Payment of rent of subsequent year, Effect*

SORUTH SOONDERY DABEE *v* BRODIE [1 W. R., 274

117. ———— **Appropriation of payments**—*Arrears and current rent—Unspecified payment.*—A payment for rent should be credited to the oldest rents first, and not to current rent, unless so specifically stated by the party making it SURNOMOYE *v.* SINGHROOP BIBEE . W. R., 1864, Act X, 133

118. ———— **Payment to one of joint lessors**—Payment to one of several joint proprietors is a payment to all. OODIT NARAIN SING *v.* HUDSON . . . . . 2 W. R., Act X, 15

RAMNATH SINGH *v* GONDEE SINGH [10 W. R., 441

SAMBHU *v.* KAMOLRAO VITHALRAO [I. L. R., 32 Bom., 794

And payment by one of several joint lessees is payment by all. NILLUMBHUR MASTOPHY *v.* DOORGA CHURN BISWAS . . . . 2 W. R., Act X, 94

119. —— ———— *Discharge of debt.*—Payment of rent by the lessee to one of several

120. ———— **Presumption of mode of payment.**—Where it does not appear that rent is payable in instalments, it must be assumed to be payable annually SURRESHOOLLAH *v* RAM COOMAR GOOPTA . . . . . 25 W. R., 556

121. ———— **Obligation as to mode of payment**—*Instalments*—Where a putnidar's rent is payable in monthly instalments, he agreeing to pay the revenue out of the rent and to file the Collector's receipts as payment, he is not entitled to deduct from an instalment of rent any portion of the Government revenue which may not be payable until after the instalment is due He is bound to pay either in cash or partly in revenue receipts, failing to pay in both shapes, he may be sued for an arrear of rent RADHAMONEE CHOWDHRAIN *v* GRAY 12 W. R., 295

122. ———— **Place of payment**—*Bengal Tenancy Act (VIII of 1885), ss 54 67—Interest—*

not appointed a convenient place for payment.

[4 C. W. N., 324

(b) NON-PAYMENT.

123. ———— **Appointment of sezawal on default in payment**—*Determination of tenancy.*—It was stipulated in defendant's lease that

LANDLORD AND TENANT—*continued.*

8 PAYMENT OF RENT—*continued.*

OMRITNATH TEWAREE v. BUGGOO SINGH [W. R., 1864, 269

Contra, DALRYMPLE v. BRAJAN SAHA [3 B. L. R., Ap., 54 note

JHOOMUCK CHOWDHRY v ANDERSON [6 W. R., Act X, 23

124. ———— A kabuliat, after the usual stipulations, provided for the cancellation of the lease on the tenant failing to pay any of

cancelled by the default ... wal had reference only to the back rents to be collected. RADHA PERSHAD SINGH v. BAJHAWUN OOPADHYA . . . . . . 24 W. R., 116

127. ———— *Onus probandi —Suit for rent—Adverse possession.*—Where the relation of landlord and tenant is proved to have ... of the

when Government claims no interest ... and plaintiff does not consent to defendant becom-

HARI VASUDEB v. MAHADAJI APPAJI [5 Bom., A. C., 85

128. ———— *Adverse possession.*—Non-payment of rent by tenant for more than twelve years does not constitute adverse possession. When possession may be referred to the contract of tenancy under which the tenant entered, mere length of enjoyment without payment of rent does not, under ordinary circumstances, affect the relation of parties. DADOBA v. KRISHNA [I. L. R., 7 Bom., 34

MAHOMED INAYETOOLLA v. AKBER ALI [2 Agra, 25

TROYLUKHO TARINEE DOSSIA v. MOHIMA CHUNDER MUTTUCK . . . . 7 W. R., 400

DAVIS v. ABDOOL HAMED . 8 W. R., 55

129. ———— *Adverse possession*—The plaintiff sued for possession of a piece of ground, alleging that he was the owner of it. The defendants denied the plaintiff's title and claimed ownership in themselves. The Subordinate Judge found that the plaintiff had originally held the property from the defendants, but that, as he had occupied it for more than twelve years without paying any rent or *acknowledging the defendants as his landlords*, he was entitled to be considered as owner by adverse possession. The District Judge, in appeal, upheld the decree of the first Court On appeal to the High Court,—*Held* that the District Judge was wrong in holding that mere non-payment of rent was sufficient to constitute adverse possession. TATTIA v. SADASHIV . . . I. L. R., 7 Bom., 40

130. ———— *Non-payment of ... occupancy raiyat—Title to land—Admission*

DAB

condition that *B* should pay a certain annual rent for such house, and if he failed to pay such rent that he

tenant were established, it was for defendant to establish its determination by affirmative proof, over

LANDLORD AND TENANT—*continued.*

8. PAYMENT OF RENT—*concluded.*

and above the mere failure to pay rent. PREM SUKH DAS v. BHUPIA . . I. L. R., 2 All., 517

132. ——— *Acquiescence of landlord, Effect of—Subsequent suit by landlord for possession—Inam land—Sub-alienee—Wrongful surrender by the village inamdar to Government—Limitation—Remand* —The plaintiff, a sub-alienee from an inamdar of certain inam, leased it to *D* prior to the year 1858. In 1860, the land was

year 1863, the plaintiff received no rent from *D* or after *D*'s death from his heirs, who paid the assessment to Government. In 1889, the plaintiff brought the present suit against the representatives of *D* and

[I. L. R., 18 Bom., 250

133. ——— *Diluvion, Dis-*

provided for by statutory enactment, but mere non-

Hemnath Dutt v. Ashgur Sirdar, I. L. R., 4 Calc., 894, not followed. MAZHAR RAI v. RAMGAT SINGH [I. L. R., 18 All., 290

LANDLORD AND TENANT—*continued.*

9. NATURE OF TENANCY.

134. ——— **Presumption as to nature of tenancy**—*Yearly tenant.*—Where there is nothing to show on what tenure a tenant holds from his landlord, the presumption is that he is a yearly tenant. ENDAR LALA v. LALLU HURI [7 Bom., A. C., 111

GOORDIAL v. RAMDUT [Agra, F. B., 15: Ed. 1874, 11

135. ——— **Holding for long period with payment of rent**—*Tenancy from year to year.*—In a suit to recover a village alleged by the

[3 Mad., 1

136. ——— **Long continuance of a tenancy at a low and unvaried rent**—*Zamindar's right against tenant—Origin and special purpose of the tenancy—Cessation to use the land for such purpose—Burden of proving permanent tenure—Inference of tenancy-at-will, or from year to year* —The evidence having shown the origin and particular purpose of a tenancy, long continued at a low and unvaried rent, *viz.*, from 1798 until 1873, when the tenant ceased to use the land for the purpose *Held* that it was not to be inferred from that evidence that an agreement had been made between the parties that the tenant should hold a permanent tenure, and *held* that on such cessation the tenant could only resist a suit to eject him by proving, or giving grounds for the inference of, an

SECRETARY OF STATE FOR INDIA v. LUCHMESWAR SINGH . . . . I. L. R., 16 Calc., 223 [L. R., 16 I. A., 6

137. ——— **Lease for construction of permanent works**—*Permanent tenure—Conduct of lessor*—The defendants and their predecessors in title held of the plaintiffs and their predecessors certain land under a pottah which, though not expressly stated to grant a permanent lease, was granted for the purpose of constructing "a brick-built dock, building, etc., and workshops." The

regarded the interest of the lessees as not permanent. Some years after the construction of the dock it ceased to be used as such. *Held* that the tenure created by the pottah was of a permanent nature. *Secretary of State for India v. Luchmeswar Singh,*

LANDLORD AND TENANT—*continued.*

9. NATURE OF TENANCY—*continued.*

I. L. R., 16 Calc., 223, *L. R., 16 I. A., 6*, distinguished. RUNGO LALL LOHEA *v.* WILSON [I. L. R., 26 Calc., 204
2 C. W. N., 718

138. ——— Perpetual tenancy—*Long*

proved their possession so far back as 1812. But it did not appear that they were put in possession first in that year. There was no evidence either of the commencement or of the duration of their tenancy. *Held* that, under s. 83 of the Bombay Land Revenue Code (Bombay Act V of 1879), the defendants' tenancy should be presumed to be perpetual, and that it lay on the plaintiff to prove the contrary. DAVLATA *v.* SAKHARAM GANGADHAR [I. L. R., 14 Bom., 392

139. ——— Tenure in property, Proof of—*Long possession at an invariable rent—Local*

NARAYANBHAT *v.* DAVLATA [I. L. R., 15 Bom., 647

140. ——— Tenancy not more than forty years old—*Bombay Land Revenue Act*

there is no reason for presuming will be the case. KALIDAS LALDAS *v.* BHAIJI NARAN [I. L. R., 16 Bom., 646

141. ——— Tenancy forty years old—*Evidence of commencement and origin of tenancy—Bombay Land Revenue Code (Bom. Act V of 1879), s. 83.*—S. 83 of the Land Revenue Code

well as the terms of the tenancy. LAKSHMAN *v.* VITHU . . . I. L. R., 18 Bom., 221

142. ——— Permanent tenancy—*Bombay Land Revenue Code (Bom. Act V of 1879), s. 83—Absence of local usage.*—The mere fact that ... to the com- ... s not prevent ... ombay Land ... 79), in cases where, by ... satisfactor ... coming ... an inamda

nearly 80 years. It was found that, owing to this antiquity of the tenancy, its commencement or duration could not be satisfactorily established by evidence. *Held* that in the absence of any local usage to the contrary *G's* tenancy must be presumed to be permanent. RAMCHANDRA NARAYAN MANTRI *v.* ANANT . . . . I. L. R., 18 Bom., 433

143. ——— *Right of occupancy—Undisturbed possession—Construction of grant—Conduct of parties.*—In a suit for ejectment brought by the trustee of a temple, the defendants set up a right of occupancy as permanent tenants. It appeared that the defendants' ancestor had held the village from the Collector (then in charge of the temple properties) under a lease which expired in 1831, when he offered to hold it for two years more. The Collector made an order that, if the tenant would not hold the land at the existing rate permanently, he should be required to give security for two years' rent. Two "permanent" muchalkas were subsequently taken from the tenant successively, but they were returned as not being in proper form. No further document was executed, but the tenant and his descendants remained in undisturbed possession at the same rate of payment up to 1888. In that year the plaintiff sent a notice of ejectment to the then tenant, who, however, set the plaintiff at defiance and remained in possession till the present suit was brought in 1890. *Held* that it should be inferred that the defendants were in possession under a permanent right of occupancy. VARADARAJA *v.* DORASAMI . I. L. R., 16 Mad., 131

144. ——— *Sheri and khata lands—Rights of khata tenants not holding under express contract, how proved—Evidence as to similar tenants in similar villages admissible—Custom—Mirasidars—Liability to enhancement of*

had no power to enhance, (3) that the enhancement by the plaintiff was unreasonable. The lower Courts held that the defendants were permanent tenants, but were bound to pay a reasonable rent.

appeal by the plaintiff the High Court *held* that they were not bound by the findings of the Judge, as it did not appear that it was admitted that the

LANDLORD AND TENANT—*continued.*

9. NATURE OF TENANCY—*continued.*

tenants in similar villages would not be excluded. Mirasidars in an inam village cannot always claim to hold at a fixed rent. An inamdar can enhance their rents within the limits of custom VISHVANATH BHIKAJI *v.* DHONDAPPA . I. L. R., 17 Bom., 475

145. ———— *Lease by temple-trustee—Ulavadai mirasidars—Long possession—Necessity for lease presumed* —In 1813, the manager of a temple gave a permanent lease of one-half of certain lands to *C*, the ancestor of the defendants 1 to 14, and the other half to *N*. In 1820, *N* transferred his half share to *V*, the son of *C* In 1831, *V* and *S*, the ancestor of the other defendants, addressed a petition to the Collector, the then manager of the temple. In 1832, *V* and *S* executed a fresh lease and a security bond in favour of the temple, in both of which documents *V* and S were described as ulavadai mirasidars, that is, persons with an hereditary right, to cultivate There was no evidence adduced to prove for what purpose the lease of 1832 was executed, but the defendants held possession as tenants from 1832 to date of suit. *Held* that the words ulavadai mirasidars used in the deeds of 1832 as describing the tenants denoted that *they were persons with hereditary right to cultivate*, and that the lease was therefore of a permanent nature. *Held* also that, after the lapse of so great a period of time, the Court would presume, under the

146. ———— *Cultivating raiyat on permanently-settled estate.*—A raiyat cultivating land in a permanently-settled estate is

147. ———— *Presumption arising from facts of permanency of tenancy—Long possession at an unvaried rent—Admissibility in evidence of judgments in former suits* —A zamindar claimed the proprietary right and possession of mouzahs within the limits of his zamindari, against tenants who by themselves and their predecessors in title, had held the land from before the Decennial

the other defendants alleged title as dar-mokurraridars under the first Part of the evidence for the defence consisted of judgments, among which was one of the year 1817, and another of 1843, to which the zamindar's predecessors had not been parties These had been given in suits brought by the successor of the ghatwal which had been resisted by the first defendants' ancestors on the ground of their having had fixity of tenure. *Held* that they could be received as evidence of long anterior possession at a rent, and of the title, on which the defendants now relied, having been openly asserted long ago Taken with other evidence, they established possession by the defendants at a uniform rent paid to the zamindar, thus leading to the inference that the tenure had been, and still was, of a permanent character. RAM RANJAN CHAKERBATI *v.* RAM NARAIN SINGH . I. L. R., 22 Calc., 533 [L. R., 22 I. A., 60

148. ———— *Presumption as*

though the land passed by successive transfers, there was nothing to show that the landlord had knowledge of them or registered the transferee as tenant, that though there were pucca buildings on the land, they had not been in existence for such a length of time as would warrant an inference that

tenancy was, when first created, intended to be permanent, or was subsequently by implied agreement converted into a permanent one. IMAIL KHAN MAHOMED *v.* JAIGUN BIBI I. L R., 27 Calc., 570 [4 C. W. N., 210

149. ———— **Construction of lease—**

tenancy in the name of *B* and terminable by a monthly notice to quit. BROJONAUTH MULLICK *v.* WESKINS . . 2 Ind. Jur., N. S., 163

150. ———— **Holding over after expiry of lease**—*Monthly or yearly tenancy—Notice to quit* —*A* and *B* let a house and premises in Calcutta to *C* under a Bengali lease, for a period of three years, from 1st Assir 1273 (14th June 1866). Upon expiration of the term, *C* continued in possession of the house, and *A* and *B*, after repeatedly calling

him,

their

day

13th day of May ... *Held* that *C*, after the end of his lease, held merely from month to month, and that the tenancy was terminable by a month's

LANDLORD AND TENANT—*continued.*

9. NATURE OF TENANCY—*concluded.*

notice. *Held,* further, that the letter of the 18th March 1873 was a sufficient notice. There is nothing which makes it a necessary inference that a tenancy in Calcutta is a tenancy by the year, in the absence of any special agreement to the contrary. So far as there is any custom in Calcutta, or any inference of fact to be drawn from mere occupation accompanied by payment of a monthly rent, it is that the tenancy is a monthly one. NOCOORDASS MULLICK v. JEWRAJ BABOO . 12 B. L. R., 263

151. ———— Duration of tenancy—*Transfer of Property Act (IV of 1882), ss. 106, 107—Presumption of yearly tenancy—Evidence—Burden of proof in action of ejectment by zamindar against tenant as to nature of tenancy.*—Suit for ejectment by a zamindar against two tenants holding under him subject to the payment of an annual cist or assessment. The zamindar was the owner of the kudivaram as well as of the melvaram right, and it was admitted that the tenants' possession was derived from him. *Held* that these facts alone were not enough to raise the presumption of a tenancy from year to year. *Per* SHEPHARD, *J.*—It is not the general rule that the tenants in an ordinary zamindari hold their lands as yearly tenants or as tenants from year to year. Many of the occupants of zamindari lands are not tenants in the proper sense of the word, and the fair presumption is that when new occupants are admitted to the enjoyment of waste or abandoned lands, the intention is that they should enjoy on the same terms as those under which the prior occupants of zamindari lands held,

raiyat the burden of proving that the tenancy is not one from year to year. In order to discharge the onus which is on him in a case of ejectment, the zamindar must do more than merely show that the land when it passed into the hands of the raiyat was at his disposal as relinquished or as immemorial waste land He must show that the defendants' possession is inconsistent with the *primâ facie* view that it is held under the usual and ordinary form of holding prevalent in the zamindaris. *Achayya* v. *Hanumantrayudu, I. L. R., 14 Mad., 269,* explained. CHEEKATI ZAMINDAR v. RANASOORU DHORA [I. L. R., 23 Mad., 318

LANDLORD AND TENANT—*continued.*

10. HOLDING OVER AFTER TENANCY.

152. ———— Tenant holding over after lease—*Tenancy from year to year—Agricultural lease.*—When a tenant holds over, after the expiration of his lease, he does so on the terms of the lease, on the same rent and on the same stipulation as are mentioned in the lease until the parties come to a fresh settlement. There is no general rule of law to the effect that the lease of an agricultural tenant in this country who holds over must be taken as renewed from year to year, and if any contract is to be implied, it should be taken to have been entered

153. ———— Terms of holding over after lease has expired—*Terms of lease.*—When a tenant holds on after the expiration of a lease, he does so at the same rent and on the same terms and stipulations as are mentioned in the lease, until the parties come to a fresh settlement. ENAYATOOLAH v. ELAHEE BUKSH [W. R., 1864, Act X, 42

SHIB SAHAE v. MUKBOOL AHMED . 2 N. W., 204

TARA CHUNDER BANERJEE v. AMEER MUNDOL [22 W. R., 395

ALLAH BIBEE v. JOOGUL MUNDUL [25 W. R., 234

154. ———— *Current rates for similar land.*—A raiyat who holds over after the expiry of his lease, in spite of his landlord, is liable to pay at the rates current for the same kind of land in the village. TOMMY v. SOOBHA KURIM LAL [2 W. R., Act X, 73

155. ———— *Evidence of*

sequently to its expiration. SHEO SAHOY SINGH v. BECHUN SINGH . . . 22 W. R., 31

156. ———— *Conditions of*

157. ———— Right of tenant holding over—*Holding over by acquiescence of landlord after lease has expired—Notice to quit.*—A landowner who, after the expiration of a lease, continues to

158. ———— *Liability to ejectment—Notice to quit.*—A tenant holding over for some time without renewal of his lease is entitled,

LANDLORD AND TENANT—*continued.*

10. HOLDING OVER AFTER TENANCY—*continued.*

whether he has any right of occupancy or not, to retain possession of his tenure until either he resigns it or is ejected in due course of law. OOMA LOCHUN MOJOOMDAR *v.* NITTYE CHUND PODDAR [14 W. R., 467

159. ———— *Notice to quit.*—Where a tenant has been allowed to hold over leases on the expiry of their terms, and has continued in possession under those leases, it must be supposed that there is an implied agreement between him and the landlord, and the tenant under such circumstances is entitled to hold on until served with a legal notice to quit. JUMANT ALI SHAH *v.* CHOWDRY CHUTTURDHAREE SAHEE . 16 W. R., 185

160. ———— *Notice to quit.*—There is no difference in law between the position of a raiyat holding without a pottah and that of one holding over, after the expiry of the term covered by a pottah, with the consent of his landlord. Such a

v. MAKUND LALL [I. L. R., 7 Calc., 710 : 9 C. L. R., 240

161. ———— Liability of tenant holding over—*Ejectment, Liability to.*—If a tenant holds his land for a term of years, and no new tenancy is created by the zamindar on the termination of the

MAHTOON

162. ———— *Tenant-at-will, Rate of rent for.*—A zamindar who allows a tenant

GOPAUL LAL THAKOOR *v.* BUDDRUOODEEN [7 W. R., 28

163. ———— *Trespasser*—Where a lessee whose lease has expired, and who is unwilling to give the increased rent demanded by the landlord, retains possession in the hope of obtaining a new lease without such increase, parties entering upon the land as cultivators with the consent of the landlord are not called upon to show the ex-lessee their authority. GALE *v.* MAHARANEE SREEMUTTY . . . . 15 W. R., 133

164. ———— *Increase of rent—Agreement for specified period.*—The defendant being, under a settlement originally obtained from the Government, bound to pay a particular rent to the plaintiff, who had, subsequently to that settlement, obtained an ijara from the Government, the plaintiff in 1879 sued to enhance that rent and obtained a

the original arrangement revived, and therefore the plaintiff was not entitled to demand more than the original rent payable. BURHUNUDDI HOWLADAR *v.* MOHUN CHUNDER GUHA . . 9 C. L. R., 508

This case was distinguished where there was no agreement for a specified period. BURHUNUDDI HOWLADAR *v.* MOHUN CHUNDER GUHA [8 C. L. R., 511

165. ———— Acquiescence of landlord in tenants holding over—*Right of occupancy.*

favour. The landlord's cause of action in such a case arises when he is refused the right to re-enter. KABEEL SAHA *v.* RADHA KISSEN MULLICK [16 W. R., 146

166. ———— Dispossession of tenant

ASHRUF 24 W. R., 335

167. ———— Suit against tenant holding over—*Suit on contract or for use and occupation.*—Where there is an express contract, the zamindar can only sue on the terms of the contract, and cannot sue for use and occupation. WATSON & Co. *v.* TARINEE CHURN GANGOOLY . 17 W. R., 494

DHUNUNDRO CHUNDER MOOKERJEE *v.* LAIDLAY [20 W. R., 400

168. ———— *Use and occupation of building under unregistered lease.*—A party who retains and holds a building under an unregistered kabuliat is liable, though the kabuliat cannot be enforced for want of registration, to pay a reasonable compensation for the use and occupation of it. PUROMA SOONDAREE DOSSEE *v.* PROLLAD CHUNDER DOSS . . . 12 W. R., 289

169. ———— *Liability to change of rent—Notice—Use and occupation of* ... In ... Bengal Act VIII of

LANDLORD AND TENANT—*continued.*

10. HOLDING OVER AFTER TENANCY —*continued.*

if the tenant continue to hold, he does so without any rent having been fixed. A suit by the landlord to recover his dues in such a case would be not a suit for rent, but for reasonable compensation for the use and occupation of the land, and the Court would have no power to fix the rent for the future. KYLASH CHUNDER SIRCAR *v.* WOOMANUND ROY [24 W. R., 412

See LALUNMONEE *v.* AJOODHYA RAM KHAN [23 W. R., 61

170. ——— *Termination of tenancy and alteration of rent after notice to quit—Suit for use and occupation.*—A landlord who can terminate his tenant's tenancy by a reasonable notice to quit can also, without giving a positive notice to quit, raise the tenant's rent by serving a reason-

to pay a reasonable sum for occupation. BUDUN MOLLAH *v.* KHETTUR NATH CHATTERJEE [24 W. R., 441

171. ——— *Consent of landlord—Trespasser—Damages for use and occupa*

not for rent as tenants, but for damages as trespassers. MACKINTOSH *v.* GOPEE MOHUN MOJOOMDAR [4 W. R., 24

172. ——— *Settlement with tenant containing a clause for re entry—Compensation in lieu of rent—Use and occupation—Tres-*

amount of rent due and for eviction. *Held* that defendants Nos 2 and 3 had no right on the pro-

LANDLORD AND TENANT—*continued.*

10. HOLDING OVER AFTER TENANCY —*concluded.*

when defendants Nos. 2 and 3 were in possession as

173. ——— *Ejectment, Delay in executing decree for—Possession of tenant until execution—Suit for damages.*—A plaintiff who had obtained a decree for ejectment under s. 25, Act

of the decree in that suit, the occupation of the defendants being the occupation of tenants-at-will and not of trespassers. AYMEL ISLAM *v.* JARDINE, SKINNER & Co. . . . . 8 W. R., 501

11. DAMAGE TO PREMISES LET.

174. ——— Damage by fire—*Negligence—Defect in building.*—The plaintiff hired a thatched bungalow of the defendant, entered into possession, and after living in the house some time lit a fire in the fire-place in one of the rooms. The chimney took fire, and the plaintiff's furniture was destroyed. He subsequently ascertained that the

given the plaintiff notice of the defective construction of the chimney. The plaintiff had a right to assume that it was properly built RADHA KRISHNA *v.* O'FLAHERTY [3 B. L. R., A. C, 277: 12 W. R., 145

175. ———Damage by storage of goods —*Warehouse—Damage—Suit for negligence—Onus probandi.*—The plaintiff let to the defendants a godown on an upper storey over his own godown

at the time the floor broke, stored upon it several casks of white and red lead and some cases containing tin plates. The evidence of professional witnesses

LANDLORD AND TENANT—*continued.*

11. DAMAGE TO PREMISES LET—*continued.*

showed that a warehouse floor ought to be able to bear 1¼ cwt per superficial foot, and there was evidence to show that the pressure on the portion of the floor which fell was, at the time, 1 cwt. 1 qr. 6 lbs. The floor gave way in the part where the heavy goods were stored, but there was nothing to show that they were improperly stored. Evidence was given that it was not usual to store heavy goods on an upper floor, but that heavy goods were sometimes stored on upper floors. The evidence of the professional witnesses was to the effect that the floor was not a proper one upon which to store merchandise, but that 1¼ cwt. was not a dangerous weight for a warehouse-floor to bear, and that no unprofessional person could have anticipated danger from it in the present instance. There was also evidence to show that the girders

and that he had failed to show that any improper or unreasonable weight had been placed by the defendants upon the floor, or such as a tenant exercising ordinary caution might not have placed there. KOEGLER *v* YULE

[5 B. L. R., 401: 14 W. R., O. C., 45

176. ———— Destruction of plants by fire—*Transfer of Property Act (IV of 1882), s. 108, cl (e)—Lease of coffee garden—Voidability of lease*—The plaintiff was the assignee of the right and title of the lessor, and the defendant was the lessee of a coffee garden under an instrument which was held to constitute a lease of the coffee

Held that the plaintiff was not entitled to recover. KUNHAYEN HAJI *v.* MAYAN

[I. L. R., 17 Mad., 98

177. ———— Destruction of premises before expiration of lease—*Lease for a year—Whole rent paid in advance—Right of tenant to a refund of rent paid in advance—Apportionment—Transfer of Property Act (IV of 1882), s. 108, cl. (e)—Contract Act (IX of 1872), s. 65*—In April 1896, the defendant let to the plaintiffs one compartment in a certain godown for storing goods for twelve months for a sum of R1,459 and a second compartment in the same godown for twelve months for R1,368. The plaintiffs entered into possession. In August 1896, in accordance with the practice, the plaintiffs paid the said two sums in advance to the defendant and got a receipt On the 30th October 1896, without any default of the plaintiffs the whole godown including the said two compartments was destroyed by fire and rendered wholly unfit for the purpose of storing goods The plaintiffs thereupon sued for a refund of a proportionate part of the money paid to the defendant, relying upon s. 108, cl. (e), of the Transfer of Property Act and s. 65 of the Contract Act. *Held* that they were entitled to recover. The consideration was for the whole year. The lease, *i.e.*, the whole contract, had become void, and therefore under s. 65 of the Contract Act the defendant, who had received the whole consideration, was bound to make compensation for that portion which had failed. DHURAMSEY SOONDERDAS *v* AHMEDBHAI HUBIBBHOY

[I. L. R., 23 Bom., 15

12 DEDUCTIONS FROM RENT.

178. ———— Right to hajuts or remissions of rent—*Discretion of landlord*—A raiyat can have no claim in law to hajats (or remissions), which being acts of grace on the part of the landlord rest solely on his discretion. PANAOLLAH NASHYO *v.* NUBODEEP CHUNDER SHAHA 15 W. R., 270

13 REPAIRS

179. ———— Liability for repairs—*Construction of lease.*—Where certain premises were let under an agreement in which the tenant covenanted as follows "I will make the necessary re-

which it became necessary to restore in consequence

180. ———————— *Deduction from rent.*—In a suit for house-rent, the tenant cannot be allowed to set off a sum expended by him in repairing the house without authority from the plaintiff. ZUMEERUNNISSA *v* GAYER . 6 W. R., Civ. Ref., 26

181. ———————— *Covenant to renew lease—Lessee's liability to keep demised premises in repair—Extent of lessor's liability—Compensation for lessee's loss for non-repairs by lessor—Transfer of Property Act (IV of 1882, as amended by Act III of 1885), s. 105.*—In the absence of express covenant in the lease how far

up the premises in good repair after expiry of lease,

LANDLORD AND TENANT—*continued.*

13. REPAIRS—*concluded.*

by any act of God or inevitable accident any material portion of the property became unfit for the purpose for which it was let, the lessee had the option to avoid the lease, but no right to claim damages against the lessor. STUART v PLAYFAIR . 2 C. W. N., 34

182 ——— *Lease – Covenant to "keep premises wind and watertight and in habitable condition"—Damage by earthquake, Liability to repair—Transfer of Property Act (IV of 1882), s. 108, cl. (m).*—Where a lessee covenanted to "keep the premises wind and watertight and in habitable condition," and the premises were subsequently damaged by earthquake,—*Held* that the lessee was bound by his covenant whether or not the damage was caused by an earthquake or other irresistible force; that the covenant was a contract

14 TAX.

183. ——— Liability for tax—*House built by tenant.*—The owner of the land is not liable for the tax assessed on a house built upon the land by his tenant . WOOMA NUNDO ROY v. BROWNE [6 W. R., Civ. Ref., 30

15. ALTERATION OF CONDITIONS OF TENANCY.

(*a*) POWER TO ALTER.

184. ——— Mortgagee of tenant—*Change of nature of tenure without authority from landlord* —When the conditi ns of a tenure have been settled by a compromise between the landlord and tenant, a subsequent mortgagee has no power to change

less he

and the

ditions.

(*b*) DIVISION OF TENURE AND DISTRIBUTION OF RENT.

185. ——— Change in position of tenants and rent payable for each portion of

payable in respect of one parcel only, and so much in respect of another. KALEE CHUNDER AICH v. RAMCUTTY KUR . . . . 25 W. R., 95

LANDLORD AND TENANT—*continued.*

15. ALTERATION OF CONDITIONS OF TENANCY—*continued*

186. ——— Breaking up tenures without consent of tenants—*Liability for rent.*—

187. ——— Splitting claim for rent—*Suit for rent under a lease of several estates where the rent is a lump sum.*—Where the rent reserved by

SINGH . . . . . . N. W., 42

188. ——— Division of holding by tenant—*Recognition of, by landlord* —A zamindar may recognize the division of a holding either for-

b

O

189. ——— *Consent of landlord—Act X of 1859, s. 27.*—Under s. 27, Act X of 1859, no division of tenure or distribution of rent is valid or binding without the consent in writing of the landlord UPENDRA MOHUN TAGORE v. THANDA DASI . . 3 B. L. R., A. C., 349

S. C. WOOPENDRO MOHUN TAGORE v. THANDA DOSSIA . . . . 12 W. R., 263

SADHAN CHANDRA BOSE v. GURU CHARAN BOSE [8 B. L. R., 6 note: 15 W. R., 99

190. ——— *Acquiescence by landlord.*—But where a zamindar himself put up a tenure for sale in separate lots, and took rents from two of the purchasers separately, it was held that no written consent was necessary in order to his being bound to recognize the partition NUBO KISHEN MOOKERJEE v. SHEERAM ROY . 15 W. R., 255

191. ——— *Consent of landlord—Power to consent—Farmer —Held* by a majority of the Court (*dissentiente* STEER, J.) that the farmer of a Government khas mehal, as the party entitled to the rents, can accept a surrender of a tenure, and therefore is competent to assent to the division of a raiyati holding within his farm into several distinct and separate holdings. HUREE MOHUN MOOKERJEE v. GORA CHAND MITTER [2 W. R., Act X, 25

192. ——— Agreements as to division —*Act X of 1859, s. 27—Liability for rent.*—The

LANDLORD AND TENANT—*continued.*

15. ALTERATION OF CONDITIONS OF TENANCY—*continued.*

(c) CHANGE OF CULTIVATION AND NATURE OF LAND.

193. ——— **Allowance of time for change of cultivation**—*Irrigated and unirrigated land*—Where a landlord claimed to revert to nanjai rates of rent (rent assessed on irrigated land), on the ground that he had repaired a tank, which for years had been unrepaired,—*Held* that a reasonable time must be allowed to the tenant to prepare for change of cultivation. LAKSHMANAN CHETTI *v.* KOLANDAIVELU KUDUMBAN I. L. R., 6 Mad., 311

194. ——— **Changing the nature of the land**—*Using land for brick-making—Injunction—Acquiescence of landlord.*—In a suit for a perpetual injunction against the principal defendants to stop the business of brick-making carried on by them on lands which they had taken under temporary leases from their co-defendants, who were holders of small jotes within the plaintiff's zamindari and to recover damages for alleged injury done to the lands, where the evidence showed such a continued use of the land for twenty-five years for the purpose of brick-making as raised a strong pre-

been in previously,—*Held* that no case had been made out for the issue of an injunction. TARINEE CHURN BOSE *v.* RAMJEE PAL . 23 W. R., 298

195. ——— *Right of tenant to change nature of land.*—No tenant taking land is entitled without some special agreement to the su make a landlor lands be the subject of a special agreement between the parties, in the same way as when parties take lands for building purposes. ANUND COOMAR MOOKERJEE *v.* BISSONATH BANERJEE . 17 W. R., 416

196. ——— *Forfeiture—Waste—Planting a mango tope on dry land.*—In the absence of local custom, tenants are not entitled to convert land under cultivation into a mango grove Tenants from year to year are not at liberty to change the usual courses of husbandry without the consent of the landlord. LAKSHMANA *v.* RAMACHANDRA . I. L. R., 10 Mad., 351

(d) DIGGING WELLS OR TANKS

197. ——— **Right to dig well**—*Mokurrari tenure. Holder of*—A mokurrari ...

198. ——— ...

LANDLORD AND TENANT—*continued.*

15. ALTERATION OF CONDITIONS OF TENANCY—*continued.*

... 24 W. R., 100

199. ——— *Custom—Acquiescence of zamindar.*—Where a cultivator was in the habit of digging wells to irrigate his field, described as irrigated chobee, and from the practice which had arisen under the old proprietors, the consent of the ...

200. ——— **Breach of covenant not to dig tank**—*Suit by zamindar*—For breach of a ...

201. ——— **Digging well or planting trees without permission**—*Ejectment—Forfeiture of lease as for breach of condition.*—The act of digging a well or planting trees may not necessarily imply or assert a proprietary right in the land in which ...

ejectment from his holding for breach of contract, ...

LANDLORD AND TENANT—*continued.*

15. ALTERATION OF CONDITIONS OF TENANCY—*concluded.*

under such belief, stood by and allowed him to go on with the construction of the buildings. *Beni Ram* v. *Kandan Lal, L. R., 26 I. A., 58; Ramsden* v. *Dyson, L. R., 1 E. & I., Ap., 129; Jug Mohan Dass* v. *Pallonjee, I. L. R., 22 Bom., 1, De Busche* v. *Alt, L. R., Ch. D, 286, Kunhamed* v. *Narayanan Mussad, I. L. R., 12 Mad., 320,* referred to. Where it is proved that the tenancy is not a permanent one, that the tenant erected a pucca building on the land without the consent of the landlord, the tenant on eviction is not entitled to any compensa-

16. TRANSFER BY LANDLORD.

215. ———— Assignee of lessor—*Assignee of right to recover rent—Acquiescence of*

216. ———————— *Right to rent—Attornment by lessee.*—A party succeeding to the proprietary rights of a lessor and dispossessing the lessee cannot sue such lessee in the Collector's Court for rent due from him as tenant, unless the latter has previously attorned to him. RAM LALL MISSER v. CHUNDRABULLEE DABEE . . 13 W. R., 228

217. ———————— *Liability for*

suit against *D* was dismissed by the lower Courts. *Held* that, as the assignment respected the rents of that tenure and *D* had admitted being in possession of the land, the suit ought to have been allowed to proceed against both. DHOOLEE CHUND v. RAJROOP KOOER . . . . 15 W. R., 107

218. ———————— *Change in proprietary title of estate—Right of patnidar to eject tenant* —A mere change in the proprietary title of an estate does not entitle a patnidar, who holds from the new proprietor, to eject a tenant who can prove a right of occupancy. RAM GHOSE v. RADHA CHURN GANGOOLY . . . . 15 W. R., 416

219. ———————— *Transfer by landlord or person having right to receive rent—Right of assignee to realize rent.*—*A*, a zamindar, granted lands on kaul to *B*. *B* assigned to *C*, but the lands being mostly in the hands of cultivators, *C* only occupied those that had been in *B*'s possession. The kist fell into arrear, and *A* attached property of *C*'s Notice of the attachment was given

LANDLORD AND TENANT—*continued.*

16. TRANSFER BY LANDLORD—*continued.*

before, but the property was not seized till after the whole of the arrears claimed had become due. *C* resisted *A*'s claim on the ground, substantially, that the sum demanded included arrears which had accrued on the lands not occupied by him. *Held* that, as to the lands of which *C* had obtained the actual possession, there was such a privity between *A* and *C* as gave *A* a right to realize the amount of kist outstanding in respect of those lands. *Held* also that this right was not affected by failure to prove the execution of a muchalka by *C* to *A*, or by the omission to furnish *C* with a list of the property attached KAMALA NAYAK v. RANGA RAU [1 Mad., 24

220. ———————— *Sale of zamindar's rights—Right of purchaser to rent.*—If, when a judgment-debtor's rights and interests in property are sold, the property is lawfully in the possession of

221. ———————— *Purchaser of zamindari, Right of, to rent.*—Where a party purchases another's zamindari rights in an estate in which that other had created an under-tenure with a fixed rent, the circumstance that payment of rent on account of such tenure was suspended while the zamindari was in the hands of the former proprietor does not affect the rights of his successor or the fixity of the rent. GUDADHUR LALL v. RAM JHAN GUNDEREE . . . . 10 W. R., 212

222. ———————— *Suit for rent—Bengal Tenancy Act (VIII of 1885), ss. 72 and 73—Rule 3, Ch. I of the Rules made by the Local Government under cl. (2) of s. 189 of the Bengal Tenancy Act—Liability for rent on change of landlord—Notice of transfer—Transfer of patni right over a specific area, whether valid—Reg. VIII of 1819, ss. 3 and 6—Transfer of Property Act (IV of 1882), s 6.*—Patni right over a specific area lying within a patni talukh is transferable. Sub-s. (*1*) of s 72 of the Bengal Tenancy Act does not require that the notice therein contemplated should be given in any particular manner. MADHUB RAM v. DOYAL CHAND GHOSE [I. L. R., 25 Calc., 445
2 C. W. N., 108

223. ———————— *Position of tenant-at-will paying rent and the purchaser.*—Where a party occupies land within a zamindari with the zamindar's permission as a tenant-at-will, on the terms of paying rent, a purchaser of the zamindari has a right to treat him as his tenant unless the zamindar has transferred his right, *e.g.*, by granting a patni for the land to a third party. In a suit

LANDLORD AND TENANT—*continued.*

16. TRANSFER BY LANDLORD—*continued.*

material. GOOROO PROSUNNO BANERJEE *v.* SREEGOPAL PAL CHOWDHRY . . 20 W. R., 89

224. ———————— *Purchaser at sale for arrears of revenue—Alteration in payment of rent*—The purchasers of a zamindar's right by having their shares separately recorded in the Collector's office under Act XI of 1859 do not acquire any right to alter the position of tenants as regards the manner in which rent is to be paid, so long as the latter hold over after the expiry of a settlement. DELAUNY *v.* KOPILOODDEEN . 25 W. R., 35

225. ———————— *Suit by purchaser of moiety of talukh for rent*—Where the plaintiff, after purchasing from *S* a moiety of a talukh which had been previously let in ijara on a lump jumma to *T*, brought a suit under Act X of 1859 against the lessee to recover that portion of the whole rental property accruing on the talukh purchased, and the suit was d...

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whole to the original lessor. TARAMONEE DOSSEE *v.* PUNCHANUN BOSE 18 W. R., 508

226. ———————— *Arrangement between ...*

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...KOUER . . . 24 W.R., 68

227. ———————— *Mortgagee after foreclosure and tenant of mortgagor.*—A mortgagee who has foreclosed his mortgage is not entitled to rent from a tenant of the property from the date of the foreclosure, but from the date on which he has perfected his title and the tenant has notice of his having done so RAISUDDIN CHOWDHRY *v.* KHODU NEWAZ CHOWDHRY . . 12 C. L. R., 479

228. ———————— *N.-W. P. Rent Act (XII of 1881), ss 7, 95 (l)—Determination of rent by Revenue Court—Suit for arrears of rent as ...*

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...as sil. The Revenue Court, by an order dated the 18th February 1884, fixed the rent at a particular sum payable annually ...

...

LANDLORD AND TENANT—*continued.*

16 TRANSFER BY LANDLORD—*concluded.*

the Revenue Court's order. *Held* by the Full Bench that the plaintiff was entitled to recover arrears of rent for the years in suit at the amount determined by the Revenue Court's order of the 18th February 1884, subject to any question of limitation that might arise. MAHADEO PRASAD *v.* MATHURA [I. L. R., 8 All., 189

17. TRANSFER BY TENANT.

229. —— —— **Right to sub-let**—*Tenant with permanent right of occupation.*—A tenant who has a permanent right to the occupancy of land subject to payment of fair and equitable rent has, as a matter of course, a right to sub-let the land to the extent of his own interest therein KHOSHAL MAHOMED *v.* JOYNOODDEEN . . 12 W. R., 451

230. ———————— *Limit of power* ... A lessee cannot ...

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[22 W. R., 274

...

232. ———————— *Sub-lease—Position of sub-tenant—Privity of contract—Ejectment—Notice to quit—Bombay Land Revenue Code (Bombay Act V of 1879), s. 84*—A sub-lease ...

...

tenants of the latter. TIMMAPPA KUPPAYYA *v.* RAMA VENKANNA NAIK . I. L. R., 21 Bom., 311

233. ———————— *Sub-letting—* ...

...

LANDLORD AND TENANT—*continued.*

17. TRANSFER BY TENANT—*continued*

234. ——— *N.-W. P. Rent*

235. ——— *N.-W. P. Rent Act (XII of 1881), s. 9—Occupancy-tenant, power of, to sub-let—Perpetual lease by occupancy tenant.*—The effect of a perpetual lease made by an occupancy tenant of his occupancy holding to a person not a co-sharer in the right of occupancy considered MAHESH SINGH v. GANESH DUBE [I. L. R., 15 All., 231

236. ——— *N.-W. P. Rent Act (XII of 1881), s. 31—Lease of occupancy holding—Relinquishment of holding pending term of*

237. ——— *Bengal Tenancy*

238. ——— Transfer of tenancy—*Yearly tenancy—Consent of landlord.*—A yearly tenancy cannot be transferred without the lessor's consent, and the fact that the lessee had had enjoyment under the pottah for a very long series of years does not alter the character of the interest originally created by the pottah. LALLJEE SAHOO v. BHUGWAN DOSS . . . . 8 W. R., 337

239. ——— *Consent of landlord—Purchaser from tenant.*—The purchaser of a raiyati tenure is bound to communicate with the zamindar and obtain his consent to the transfer of the tenure; without this being done, a gomastah's receipts of rent are not binding on the zamindar. BHOJOHUREE BANICK v. AKA GOLAM ALI . 16 W. R., 97

240. ——— *Transfer of non-transferable tenure—Right of purchaser against transferee of raiyat.*—Where proprietors purchased a tenant's rights and sued to eject one, who alleged that he held the pottah from the tenant, it was held that the tenant, being a simple raiyat without transferable rights, could not give a third party any right of possession, as against the proprietors of the estate, and that the holder of the pottah from the tenant was a mere trespasser. OMAR v. ABDOOL GUFFOOR . . . . . 9 W. R., 425

241. ——— *Kurpha tenant—Transferable tenures.*—The jummai rights of a kurpha under-tenant are not transferable without the consent of the raiyat-landlord BONOMALI BAJADUR v. KOYLASH CHUNDER MOJOOMDAR [I. L. R., 4 Calc., 135

242. ——— *Transfer by tenant of mirasi rights—Acknowledgment of transfer by landlord.*—The right of transfer of mirasi rights, although by no means commonly enjoyed by tenants in these provinces, is nevertheless in some places sanctioned by local usage. Where a person has made such a transfer without authority, it should nevertheless be enquired into whether or not the landlord has sanctioned such transfer by accepting the assignee as tenant and receipt of rent KOOERYA v. DOORGA PERSHAD . . . 2 N. W., 139

243. ——— *Suit for rent of transferable tenure—Possession of holder*—The person into whose hands a transferable tenure comes is bound to pay rent to the landlord, unless kept out of possession and enjoyment by the fault of the land-

244. ——— *Liability for rent—Party in possession.*—A landlord seeking to recover rent is not bound to proceed against any person who may have any latent beneficial right to the tenure in respect of which the rent has fallen due, but against that person only who may be found in possession thereof with a legal right. TILOCK CHUNDER CHUCKERBUTTY v. GOURMONEE . 2 Hay, 364

245. ——— *Liability for*

rent or in other ways ANUND MOYEE DASSEE v. MOHINDRO NARAIN DASS . . 15 W. R., 264

246. ——— *Suit for rent against person in possession though unregistered.*—An action for rent does not lie against a person said or shown to be in possession of a tenure which is written in the books of the zamindar in the name of a different person unless there is a contract for rent, express or implied. ESHAN CHUNDER GHOSSAL v. BURNO MOYEE DOSSEE . . 16 W. R., 233

247. ——— *Liability for rent—Unregistered transfer.*—Where there has been

LANDLORD AND TENANT—*continued.*

17. TRANSFER BY TENANT—*continued.*

exempted from their responsiblity to pay the rent. MOTEE ROY v. MEAJAN . . 20 W. R., 443

SUROOP CHUNDER MITTER v. DHONAYE BISWAS [23 W. R., 103

248. ———— *Transfer of raiyati jote—Unregistered occupier—Person in possession*—In the case of transfer of a mere raiyat's jote, the person in possession is liable for the rent, whether he is registered or not. GUNGA RAM SIRDAR v. BIRESSUR BANERJEE 6 W. R., Act X, 32

MISSLEBACK v. LUCHMEE NARAIN [17 W. R., 504

249. — — — *Suit for rent—Possession—Registration of tenants.*—A suit for rent against several parties is maintainable against such of them as are shown to be in possession as tenants, whether they are registered or not JEBABUTOONISSA KHANUM v RAM CHUNDER DOSS [6 W. R., Act X, 36

250. ———— *Non-registration of transfer.*—When a tenure is not transfer-

[illegible]

251. ———— *Non-registration of transfer*—Non-registration in the zamindar's serishta does not invalidate the sale of a tenure. BHARUT ROY v. GANGANARAIN MOHAPUTTER [14 W. R., 211

252. ———— *Unregistered transferee*—The unregistered transferee of a transferable tenure cannot be treated by the zamindar as a trespasser, but, as against the zamindar who has evicted him, has a right to be restored to possession. NOBEEN KISHEN MOOKERJEE v. SHIB PERSHAD PATTUCK . . . . . 8 W. R., 96

Upheld on review . . . 9 W. R., 161

253. ———— *Unregistered transferee.—Per* KEMP, *J*—On the death of a registered patnidar, a zamindar is not bound to recognize any one as his tenant without registration in his serishta; nor is he prevented from putting in a sezawal to collect the rents until a declaration of the rights of the deceased patnidar's heirs. RAM CHURN BANDOPADHYA v DROPO MOYEE DOSSEE [17 W. R., 122

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vendee of a saleable under-tenure as tenant, notwithstanding that no mutation of names has taken place in his books. MEAH JAN v. KURRUNAMAYI DEBI [8 B. L. R., 1

255. ———— *Act X of 1859, s. 27—Division of rent or tenure.*—The lessor is not bound to recognize the title of any one except the person with whom he deals, whatever that title may be as between the lessee and the members of his family. UPENDRA MOHUN TAGORE v. THANDA DASI [3 B. L. R., A. C., 349

S. C. WOOPENDRO MOHUN TAGORE v. THANDA DOSSIA . . 12 W. R., 263

SADHAN CHANDRA BOSE v GURU CHARAN BOSE [8 B. L R., 6 note : 15 W. R., 99

256. ———— *Liability for rent—Mortgagee in possession—Transfer of Property Act (IV of 1882), ss 65, 76.* Where the subject of a mortgage is leasehold property, and the mortgagee is put into possession under circumstances which amount to an assignment or transfer of the

[illegible]

being liable for the rent KANNYE LALL SETT v NISTORINY DOSSEE I. L. R., 10 Calc., 443

257. ———— *Purchaser of khas mehal—Registration of tenures*—The purchaser of a Government khas mehal is not bound by the transfer of the rights of any of the original tenants, which have never been registered or recognized by himself or by Government, but can sue the original tenants for their arrears of rent HURO MOHUN MOOKERJEE v. RAM COOMAR MITTER [1 W. R., 225

It is otherwise if they are registered. HUROMOHUN MOOKERJEE v GOLUCK MUNDUL [1 W. R., 351

SUTTO CHURN GHOSAL v. OBHOY NUND DOSS [2 W. R., Act X, 31

258. ———— *Failure to obtain registry of name—Purchaser, Position of*—Where the purchaser of a patni talukh fails to obtain registry of his name in the zamindar's books, a third party who claims to derive his title from the purchaser's vendor has no right on the ground of such failure to treat the purchaser as his tenant. RAM NARAIN DOSS v. TWEEDIE 12 W. R., 161

259. ———— *Right of purchaser—Under-lessees*—*A* agreed to take at a stipulated rent a portion of the property leased to *B* for the rem[illegible] after, *B* an[illegible] who gave a [illegible] sold all his [illegible] time, and [illegible] stipulated [illegible] he had ma[illegible] time of *B* [illegible]

LANDLORD AND TENANT—*continued.*

17. TRANSFER BY TENANT—*continued.*

tenant-at-will. *Held* that *A* was bound, under the terms of his contract, to pay the rent for as many years as the lease had to run to his lessor, or to the person who represented his lessor. RUSHTON *v.* ATKINSON . . . . 11 W. R., 485

260. ——— *Liability for*

which has accrued due prior to his taking possession. Hence if *A* leases land to *B*, who transfers the lease to *C*, and *C* mortgages to *D*, who afterwards forecloses his mortgage and takes possession of the demised premises, *D* cannot be held liable for any rent which has accrued due prior to his taking possession. MACNAGHTEN *v.* LALLA MEWA LALL [3 C. L. R., 285

261. ——— *Non-registration of tenure—Recognition of transfer of tenure* —A patnidar is not bound to recognize any purchaser by private sale as his dar-patnidar until he registers

262. ——— *Transfer of permanent hereditable tenure—Forfeiture—Sar-*

of such improper transfer does not deprive the old sarbarakar of his rights, or entitle the zamindar to get khas possession. KASHEENATH PUNEE *v.* LUKHMONEE PERSHAD PATNAIK . 19 W. R., 99

263. ——— *Transfer defeating right of re-entry.*—Even where a lessee's interest is transferable, the landlord is not obliged to recognize a transfer, if the effect of so doing would be to defeat his own right of re-entry. NUND KISHORE SINGH *v.* ISMED KOOER . . 20 W. R., 189

264. ——— *Liability for rent—Registration of tenant—Transfer without*

the old tenant was; and this personal liability continues, notwithstanding a fresh transfer or devolution of the tenure, unless proper steps are taken to apprise the landlord of the change and to have it registered in his serishta. DWARKA NATH MITTER *v.* NOBONGO MUNJORI DASSI . 7 C. L. R., 233

265.

name and that of the registered tenant is not sufficient notice to the zamindar of such purchase; nor is the mere acceptance by the zamindar of rent so paid an acknowledgment on his part of the purchaser as his under-tenant, but it is otherwise when there is acceptance with notice, notwithstanding that the transfer has not been registered. MRITYUNJAYA SIRCAR *v.* GOPAL CHANDRA SIRCAR [2 B. L. R., A. C., 131

S. C. MIRTUNJOY SIRCAR *v.* GOPAL CHUNDER SIRCAR . . . . . 10 W. R., 466

266. ——— *Transfer by registered tenant—Sale in execution of decree—Receipt of rent—Acknowledgment of tenancy—Bengal Act VIII of 1865, s. 16.*—The plaintiffs were shareholders with one *B* in a tenure, of which *B* was the

by the defendant In a suit by the plaintiffs to set aside the sale and recover their property,—*Held* they were pecuniarily liable for the rent with *B*, unless the zamindar had made a separate agreement with them; that the whole tenure was rightly seized and sold in execution of the decree; and that the taking of the rent from them by the zamindar was no such recognition as to bind him or create a valid incumbrance under s. 16, Bengal Act VIII of 1865. SRINATH CHUCKERBUTTY *v.* SRIMANTO LASHKAR [8 B. L. R., 240 note: 10 W. R., 467

267. ——— *Without consent of zamindar—Right of zamindar to sell tenure for arrears of rent—Recognition of transferee.*—A tenant cannot, by merely alienating his tenure, deprive the zamindar of the right which he would otherwise have to sell it in execution of a decree for arrears of rent. A zamindar can sell the tenure in the hands of the transferee, not being one of the judgment-debtors, if he does so with reasonable promptness: provided he has not done anything to recognize the transfer. Where a zamindar makes a transferee a party to a suit for rent and accepts a decree against him jointly with other persons, he must be held to have recognized the transferee as a tenant, although the latter's name may not have been entered as such in the zamindar's book RAM KISHORE ACHARJEE CHOWDHRY *v.* KRISHNO MONEE DEBIA [23 W. R., 106

268. ——— *Liability for rent—Non-registration of tenure* —*A*, the lessee of a transferable tenure, transferred his interest to *B*, but after the transfer the name of *A* remained as registered tenant. Subsequently the zamindar brought a suit against *A* for arrears of rent which accrued due partly before and partly after the purchase, and obtained a decree for the sale of the tenure. *Held* that the decree might be executed against the tenure, though the latter was in *B*'s possession before it was passed, it not appearing that the zamindar had knowledge of the transfer before the date of the decree. WOOMA CHURN CHATTERJEE *v.* KADAMBINI DABEE . . 3 C. L. R., 146

LANDLORD AND TENANT—*continued.*

17. TRANSFER BY TENANT—*continued.*

See NOBIN CHUNDER SEN CHOWDHRY *v.* NOBIN CHUNDER CHUCKERBUTTY . . 22 W. R., 46

269. ——— *Position of purchaser—Act X of 1859, s. 21*—A decree against a vendor obtained before a Collector cancelling a pottah of a jote which has been sold is not binding on the purchaser of the jote, if the purchase was made before the transfer of the tenure to him took place. The purchaser, having entered into possession, became a "raiyat holding under a pottah, the term of which had not expired," within s. 21, Act X of 1859, and therefore could not be ejected otherwise than in execution of a decree made in a suit against himself. LALLJEE SAHOO *v.* BHUGWAN DOSS . 8 W. R., 337

270. ——— *Suit for rent—Liability of tenure for rent—Rent due by former tenant*—A decree for rent obtained by a landlord against his registered tenant renders the tenure

before such tenant became the owner of the tenure. The remedies which are provided by the Rent Law

271. ——— *Enhancement of rent, Suit for—Transferable tenure—Mutation of names—Tenant who has transferred his holding, Liability of, for rent.*—The main object of a suit for enhancement is to have the contract between the landlord and tenant as regards the rate of rent re-adjusted. In a suit for enhancement it was found that the defendant had, prior to institution, sold his holding, which by custom was transferable without the consent of the landlord, to a third party. There had been no mutation of names, or payment of a

272. ——— *Mortgage of*

obtains possession, is not an act "detrimental to the

LANDLORD AND TENANT—*continued.*

17. TRANSFER BY TENANT—*continued.*

[I. L. R., 12 All., 419

273. ——— *Transfer of portion of mokurari tenure—Bengal Tenancy Act (VIII of 1885), ss 17, 18, and 88—Rights of purchaser or transferee of tenure—Right of suit.*—There is nothing in s. 88 of the Bengal Tenancy Act to prevent a person who has purchased a share in a mokurari holding from bringing a suit for a declaration of his right to that share and for possession of the same after setting aside a sale held in execution of a decree for rent to which he was not made a party. Ss. 17 and 18 of the Bengal Tenancy Act recognize the transfer of a share of a holding, and enable the transferee to be regarded as one of the tenants in respect of the holding. MOHESH CHUNDER GHOSE *v.* SARODA PRASAD SINGH

[I. L. R., 21 Calc., 433

274. ——— *Transfer of*

transferee upon the privity of estate, though he can have execution against one only. KUNHANUJAN *v.* ANJELU . . . I. L. R., 17 Mad., 296

275. ——— *Transfer of Property Act (IV of 1882), s. 108—Transferabi-*

276. ——— *Transfer of Property Act (IV of 1882), s. 108, cl. (j)—Liability of a lessee for rent after transfer—Leases of non-agricultural character.*—To suits brought by a landlord against his lessee for rent based upon kabuliats, the leases being of a non-agricultural character, an assignee of the lessee was made a party defendant on his own application. It was contended on behalf of the lessee that under the common law

of India it was competent for the tenant to rid him-

of a non-agricultural character; and that s. 108, cl. (j), of the Transfer of Property Act, which

lord. SASI BHUSHUN RAHA v. TARA LAL SINGH DEO . . . . I. L. R., 22 Calc., 494

277.————— *Bengal Tenancy Act (VIII of 1885), ss. 18 and 50—Presumption—Occupancy raiyats—Raiyats holding at fixed rent—Incidents of tenancy—Transferability of tenure—Alienation of part of a tenure—Suit for khas possession and for declaration that alienation was invalid—Form of decree.*—In a suit

found that the rate of rent payable for the holding had never been changed since 1831, and that there was nothing to rebut the presumption raised by s. 50 of the Bengal Tenancy Act (VIII of 1885). *Held* (1) that the alienation did not work a forfeiture, and the plaintiffs were not entitled to khas possession, but they were entitled to the declaration that the alienation was not binding

the incidents of a holding at fixed rates as prescribed by s. 18 of the Act. BANSI DAS *alias* RAGHU NATH DAS *v.* JAGDIP NARAIN CHOWDHRY

I. L. R., 24 Calc., 152

Dissented from in DALHIRI GOLAB KOER *v.* BALLA KURMI . . . . I. L. R., 25 Calc., 744

278.————— *Mulgeni lease—Alienation by mulgenidar—Alienation contrary to the terms of the lease. Absence of any clause as to re-entry—Suit by mulgar for possession.*—In the absence of any clause for re-entry in the event of alienation by the mulgenidar (permanent tenant) contr

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279.————— *N.-W. P. Rent Act (XII of 1881), s. 9—Mortgage by occupancy-tenant—Surrender of holding by heirs of mortgagor—Suit on mortgage—Sale and purchase by mortgagee—Subsequent suit by zamindar for recovery of occupancy-holding.*—*A*, an occupancy-tenant to whom the second and third paragraphs of s. 9 of Act XII of 1881 applied, gave a simple mortgage of his occupancy-holding to one *S*. During the continuance of the mortgage, *A* died and his sons surrendered the occupancy-holding to the zamindar. *S* then brought a suit for sale on his mortgage, obtained a decree, had the mortgaged property sold, and purchased it himself. On suit by the zamindar, who had not been made a party to any of the previous

280.————— *Alienation contrary to terms of lease—Absence of any clause as to re-entry—Suit for ejectment—Forfeiture.*—A clause in a lease whereby the lessee covenanted not to alienate, unaccompanied by any clause for re-entry upon breach of the covenant, held to be a covenant merely and not a condition, and a suit for ejectment brought by the lessor was dismissed. *Narayan Dasappa* v. *Ali Saiba, I. L. R., 18 Bom., 603*, followed. MADAR SAHEB *v.* SANNABAWA GAJRANSHAH . . . . I. L. R., 21 Bom., 195

281.————— *Transfer by tenant without consent of landlord—Original*

transfer of the tenures, and the original tenants had remained in possession as sub-tenants of the transferees,—*Held* that the principle laid down in *Kabil Sar*

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DRA CHUNDER CHOWDHRY I. L. R., 24 Calc., 212

282.————— *Transfer by tenant of land on which he has by permission of zamindar built a house for his own occupation—Rights of zamindars in land forming part of the abadi—Customary law of the North-Western Provinces.*—Accor

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abadi, obtains, if there is no special contract to the contrary, a mere right to use that house for himself and his family so long as he maintains the house, that is, prevents it falling down, and so long as he does not abandon the house by leaving the village. As such occupier of a house in the abadi occupying under the zamindar, he has, unless he has obtained by special grant from the zamindar an interest which he can sell, no interest which he can sell

LANDLORD AND TENANT—*continued.*

17 TRANSFER BY TENANT—*concluded.*

283. ———— *Payment into Court by tenant, and withdrawal of money by landlord—Effect of withdrawal as showing consent of landlord to transfer.*—When a non-transferable holding was advertised for sale in execution of a

be inferred from the above circumstances that the landlord had given his consent to the transfer, inasmuch as the plaintiff had a right to draw the money out of Court without regard to the manner in which or the source from which the judgment-

18 ACCRETION TO TENURE.

284. ———— **Right to increment to tenure.**—The law gives an increment to a tenant or under-tenant in possession, without reference to the nature of his title. NARAIN DOSS BEPARY *v.* SOOBUL BEPARY . . **1 W. R., 113**

285. ———— *Tenant-at-will.*

Contra FINLAY, MUIR & CO. *v.* GOPEE KRISTO GOSSAMEE . . . . **24 W. R, 404**

286. ———— **Right to pottah from the zamindar for accreted land**—*Jote paying rent to Government.*—In case of an accretion to land by alluvion, the raiyat is not entitled to a pottah from the zamindar in respect of the accretion, if it is an accretion to a jote the rent of which is payable to Government. CAMPBELL *v.* KISHEN DHUN AUDHICAREE . . **Marsh., 67 : 1 Hay, 233**

KISHEN DHUN AUDHICAREE *v.* CAMPBELL **[W. R., F. B., 22 : 1 Ind. Jur., O. S., 79**

TOON . . . . . **1 Hay, 310**

288. ———— *Beng. Reg. XI of 1825, s. 4, cl. 1.*—*Held* that, under s. 4, cl. 1,

LANDLORD AND TENANT—*continued.*

18. ACCRETION TO TENURE—*continued.*

although he may not establish that he has held such alluvial land for twelve years. OODIT RAI *v.* RAMGOBIND SINGH . . . **2 Agra, Pt. II, 208**

289. ———— *Land accreted to muafi tenure—Beng. Reg. XI of 1825, s. 4, cl. 1.*—Where alluvial land has been formed in front of and contiguous to an old muafi which had been resumed and settled with the muafidars,—*Held* that, in the absence of any custom to the contrary, the

290. ———— Where lands

291. ———— *Beng. Reg. XI of 1825, s. 4, cl. 1.*—Cl. 1, s. 4, Regulation XI of 1825, refers only to under-tenants intermediate between the zamindar and the raiyat, and to khoodkasht or other raiyats who possess some permanent interest in their lands, and not to tenants from year to year. ZUHEEROODEEN PAIKAR *v.* CAMPBELL **[4 W. R., 57**

292. ———— *Beng. Reg. XI of 1825, s. 4, cl. 1.*—Cl. 1, s. 4, Regulation XI of

demand both for the original estate or original subordinate tenure and for the accreted land, the very

293. ———— **Accretion to zimma tenure**—*Beng. Reg. XI of 1825.*—Cl. 1, s. 4, Regulation XI of 1825, and s. 22, Act X of 1859, will not allow a suit for the assessment of lands accreted to a

talukhdari rates paid by others of the same class for similar lands. PANIOTY *v.* JUGGUT CHUNDER DUTT **[9 W. R., 379**

294. ———— **Accretion to holding of mirasi jotedar**—*Right of occupancy.*—A mirasi

LANDLORD AND TENANT—*continued.*

18 ACCRETION TO TENURE—*continued.*

jotedar with a right of occupancy has a right to lands which accrete to his jote, and the zamindar cannot take them away and settle them with other parties. ATTIMOOLLAH *v.* SAHEBOOLLAH [15 W. R., 149

295. ——— Jote tenure—*Beng. Reg. XI of 1825, s. 4, cl. (1)—Occupancy right—Raiyat.*—A raiyat who has a right of occupancy is entitled to the benefit of s. 4, cl. (1), of Regulation XI of 1825. *Gobind Monee Debia* v. *Dinobundhoo Shaha, 15 W. R., 87 ; Attimoollah* v. *Saheboollah, 15 W. R., 149* , and *Bhagabat Prasad Sing* v. *Durg Bijai Singh, 8 B. L. R., 73 . 16 W. R., 95,* followed. *Finlay, Muir & Co.* v. *Gopee Kristo Gossamee, 24 W. R., 404,* not followed. GOURHARI KAIBURTO *v.* BHOLA KAIBURTO . I. L. R., 21 Calc., 233

296.——— Rent of accreted land—*Beng. Reg. XI of 1825, s. 4, cl. 1—Liability to increased rent.*—When the area of land held by a tenant under a permanent tenure has been increased by accretion, the tenant becomes subject to pay an increased rent on account of the land gained by accretion, on the conditions laid down in Regulation XI of 1825, s. 4, cl. 1. RAMNIDHEE MANJIE *v.* PARBUTTY DASSEE . . . I. L. R., 5 Calc., 823

S. C. SHOROSSOTI DOSSEE *v.* PARBUTTI DOSSEE [6 C. L. R., 362

BROJENDRA COOMAR BHOOMICK *v.* WOOPENDRA NARAIN SINGH . . I. L. R., 8 Calc., 706

See BAKRANATH MANDAL *v.* BINODE RAM SEIN [1 B. L. R., F. B., 25 : 10 W. R., F. B., 33

HURROSOONDEREE DOSSEE *v.* GOPI SOONDEREE DOSSEE . . . . . 10 C. L. R., 559

297. ——— Lands formed by the drying-up of a beel or marsh—*Trespasser—*

that the plaintiff not having treated the defendants

[4 C. W. N., 503

298. Accretion to parent estate, Assessment of rent in respect of—*Reg. XI of 1825, s. 2, cl. (1)—Act XI of 1855, s. 1—Reg. VII of 1822—Act IX of 1847—Act XXXI*

LANDLORD AND TENANT—*continued.*

18. ACCRETION TO TENURE—*continued.*

of 1858—Bengal Tenancy Act (VIII of 1885), s. 52.—In a suit brought by the talukhdar of a certain mouzah against the dar talukhdar for a

gether ; that the increment was to be regarded as

use and occupation. ASSANULLAH BAHADUR *v.* MOHINI MOHAN DAS . I. L. R., 26 Calc., 739

299. ——— Lessee under Government—*Right of lessee to accretions to his tenure.*—

ing and may sue the occupants for a fair and equitable rent. MUTURA KANT SHAHA *v.* MEAJAN MUNDUL . . . . . . 5 C. L. R., 192

300. ——— Land in excess of tenure—*Accretions to parent tenure—Rate of rent—Beng.*

tenure, and that the same rent was payable for it

301. ——— *Submergence of occupancy-tenant's land—Diluvion—Liability for rent—Resumption by landholder — Custom — Act XII of 1881 (N.-W. P. Rent Act), ss. 18, 31, 34 (b), 95 (n).*—A landholder,—alleging that by local custom when land was submerged, and the tenant

LANDLORD AND TENANT—*continued.*

18 ACCRETION TO TENURE—*continued.*

such land had re-appeared and had come into his possession under such custom,—sued such tenant in the Civil Court for a declaration of his right to the possession of it *Held* that, inasmuch as ss 18 and 31 of the N.-W. P. Rent Act, 1881, showed that [illegible] custom set up by the landholder was opposed to the provisions of s. 34 (*b*) of that Act, the suit was not maintainable. KUPIL RAI *v* RADHA PROSAD SINGH [I. L. R., 5 All., 260

302. ———— *Suit for increased rent for lands found in excess on measurement.*—In a suit to recover a kabuliat at enhanced rates for excess lands, where defendant filed a pottah [illegible] to the land claimed as lakhiraj, that plaintiff's remedy lay in a suit for resumption and assessment; and with regard to the land covered by the pottah, that defendant was entitled to hold the whole of the lands comprised within the daghs, notwithstanding that a recent measurement showed a greater extent of area than had been formally ascertained MODEE HUDDIN JOWADAR *v* SANDES . 12 W. R., 439

RASHUM BEEBEE *v*. BISSONATH SIRCAR [6 W. R., Act X, 57

DAVID *v* RAM DHUN CHATTERJEE [6 W. R., Act X, 97

RAJMOHUN MITTER *v*. GOOROO CHURN AYCH [6 W. R., Act X, 106

303. ———— **Land held in excess of tenure** — *Mirasi istemrari pottah — Right to enhance rent.*—Where a mirasi istemrari pottah had been granted by a patnidar whose patni had been created while the mehal was under temporary settlement and who had to pay a higher rent to the zamindar when the latter obtained a permanent settlement from Government at a higher jama, it was [illegible] the foregoing ground, he was held not to be entitled to a decree for enhancement of excess land in defendant's possession, or to treat him as a trespasser in respect of such excess. BINODE BEHAREE ROY *v*. MASSEYK [15 W. R., 494

304. ———— *Rate of rent assessable for.*—In respect to excess area it was [illegible]

305. ———— *Suit for rent —Encroachment.*—*A*, the holder of an independent istemrari tenure lying in *B*'s zamindari, let it to *C*, who, under cover of his lease, encroached upon the zamindari lands. *Held* that there was no implied contract of tenancy between *C* and *B*, and *B* could not sue *C* for rents on account of the excess lands. JAYNARAYAN SINGH *v*. MATILAL JHA [1 B. L. R., A. C., 21

306. ———— *Encroachment* [illegible] upon are added to the tenure and form part thereof [illegible] tenancy is permanent, or he has a right of occupancy, cannot be ejected from them while the tenure lasts; but when rent is re-adjusted, these lands may be brought into the calculation. GOOROO DOSS ROY *v*. ISSUR CHUNDER BOSE . 22 W. R., 246

307. ———— *Fazendari tenure—Encroachment of tenant added to the tenure.*—An encroachment made by a tenant on the property of his landlord—*e.g.*, by a person holding under fazendari tenure—should not be presumed to have been made absolutely for his own benefit and against his landlord, but should be deemed to be added to the tenure, and to form part thereof *Gooroo Doss Roy* v. *Issur Chunder Bose, 22 W. R., 246*, followed. ESUBAI *v*. DAMODAR ISHVARDAS [I. L. R., 16 Bom., 552

308. ———— *Encroachment by a tenant—Effect of such encroachment—Position of such tenant—Trespasser.*—When a tenant encroaches upon the land of his landlord, he does not by such encroachment become the tenant in respect of the land encroached upon against the will of the landlord. PROHLAD TEOR *v*. KEDARNATH BOSE [I. L. R., 25 Calc., 302

309. ———— *Landlord's right—Encroachment acquiesced in by landlord.*—If a tenant during his tenancy encroaches upon the land of a third person, and holds it with his own tenure until the expiration of the tenancy, he is [illegible] MEAJAN . . . I. L. R., 10 Calc., 820

310. ———— *Tenant bringing jungle land into cultivation—Assessment of* [illegible]

LANDLORD AND TENANT—*continued.*

18. ACCRETION TO TENURE—*concluded.*

by means of special works and special labour, unculturable into culturable land,—is entitled to hold at exceptionally low rates. CHOWDHRY KHAN *v.* GOUR JANA . . . 2 W. R., Act X, 40

19. RIGHT TO CROPS.

311. ———— Right to crops on death of occupancy raiyat—*Legal representatives, Right of, against zamindar.*—A zamindar cannot lay claim to

[3 Agra, 188

312. ———— Right to crops when stored—*Bhag-jote tenure.*—When lands are held under a bhag-jote tenure and the tenants are bound by agreement to cut and store the crops on their landlord's chuck, where it is afterwards to be divided, the dominion over the crops till division is in the landlord. HORRO NARAIN *v.* SHOODHA KRISTO DEBAH I. L. R., 4 Calc., 890: 4 C. L. R., 32

313. ———— Standing crops—*Effect of order of ejectment under Bengal Rent Act, 1869*—The effect of an order of ejectment under the Bengal Rent Act is to dispossess the raiyat not only of the land, but also of the crop standing thereon. IN THE MATTER OF DURJAN MAHTON *v.* WAJID HOSSEIN

[I. L. R., 5 Calc., 135

20. PROPERTY IN TREES AND WOOD ON LAND.

314. ———— Right to trees for timber—*Right to cut down trees*—A zamindar has a right in the trees grown on the land by the tenant, and although the tenant has a right to enjoy all the benefits of the growing timber during his occupancy, he has no power to cut the trees down and convert the timber to his own use. The zamindar may sue to have his title in the growing trees declared. ABDOOL ROHOMAN *v.* DATARAM BASHEE

[W. R., 1864, 367

315. ———— Right to trees planted by raiyat—*Death of raiyat.*—*Held* that the plaintiffs, the owners of the lands on which trees stand, are, in default of heirs, entitled to proprietary possession of trees as "lawarisee" which had been planted by the deceased raiyat. BHAIROW DEEN *v.* MOOKTA RAM . . . . . . 1 Agra, 13

316. ———— Right to trees already planted—*Lease in perpetuity.*—Where a lease is granted in perpetuity at a fixed rent and the lessor reserves no reversionary interest in the land or in the trees growing on it, the lessees are entitled to the ownership of the trees. SHARODA SOONDARI DEBIA *v.* GOLEE SHEIK . . 10 W. R., 419

317. ———— Assessment in respect of trees—*Profits realised by erection of huts for pilgrims.*—A landlord is entitled to assessment in respect of trees as being the produce of the soil, but not in respect of profits realized by the use of stalls or huts erected by the tenant for the use of pilgrims frequenting a fair annually held on the land in honour of an idol which the defendant has there. KEWAJAH CHYEMUN KAJAH *v.* JAN ALLY CHOWDHRY . . . . . . 1 W. R., 46

LANDLORD AND TENANT—*continued.*

20. PROPERTY IN TREES AND WOOD ON LAND—*continued.*

318. ———— Evidence of property in trees—*Proof of acts of ownership.*—A person's title or property in a tree may be proved by showing that the tree grows on his land, without proof of any act of ownership over the tree. CHUTOOR BHOOJ TEWAREE *v.* VILLAET ALI KHAN

[W. R., 1864, 223

319. ———— Trees planted by lessee—*Right to growing trees under grant of homestead or waste land.*—A peshcushi sanad, or grant at a quit rent of homestead and waste land, being construed to assign a heritable right in a tract of land capable of yielding fruits by virtue of which the holder, during the continuance of his right, possessed absolutely the entire use and fruits thereof,—*Held* that the lessor or grantor had no more right to the trees planted by the lessee than he had to the crops sown by him. GOLUCK RANA *v.* NUBO SOONDUREE DOSSEE . . 21 W. R., 344

320. ———— Presumption as to ownership of trees—*Suit for possession of tree—Presumption in favour of lessee*—In a suit to recover

entitled to remain in possession of the tree notwith-

321. ———— Right of tenant to remove trees—*Determination of tenancy—Purchaser of rights of tenant after expiry of tenure.*—*Held* that trees accede to the soil and pass to the landholder

a trespasser. *Held* also that, where a tenant has been ejected in the execution of the decree of a Revenue Court for arrears of rent from the land forming his holding, his tenancy then terminates, and

LANDLORD AND TENANT—*continued.*

20 PROPERTY IN TREES AND WOOD ON LAND—*continued.*

322. ——— Property in timber—*Right to trees on land—Transfer of trees by tenant.*—The presumption of law and the general rule is that property in timber on a tenant's holding rests in the landlord in the same way as, and to no less an extent than, the property in the soil itself. *Soonar v. Khuderun, 2 N. W., 251, Ajudhia Nath v. Sital, I. L. R., 3 All., 567, Abdool Rohoman v. Dataram Bashee, W. R., 1864, p. 367, Ruttonji Edulji Shet v. Collector of Thanna, 11 Moore's I. A., 295 10 W. R., P. C., 13,* referred to. *Held,* therefore, where an occupancy-tenant transferred his holding, that the transfer was not only invalid in respect of the holding, but in respect also of the trees on the holding KASIM MIAN *v.* BANDA HUSAIN I. L. R., 5 All., 616

323. ——— Lease of produce of trees —*Effect of lease to pass property in trees* —A lease which gave a right to the produce of trees held not to pass any property in the trees. MAHOMED ALI *v.* DEO NARAIN SINGH . . . 1 W. R., 352

324. ——— Property in trees passing with the land —Trees so long as they are not severed or cut are *primâ facie* to be taken as passing with the land on which they grow, and a sale of a house and compound would comprise the trees thereon unless it could be shown that they were specially excepted. SOONAR *v.* KHUDERUN 2 N. W., 251

325. ——— Sale of trees in execution of decree against tenant—*Trees planted by occupancy-tenant with landlord's consent—Transfer of right of occupancy—Act XII of 1881 (N.-W. P. Rent Act), s 9*—An occupancy tenant, whose orange trees, planted with the landholder's consent, had been sold in execution of a decree against him, made a collusive resignation of his land to the landholder, who thereupon sued the purchaser and the occupancy-tenant for possession of the land with or without the trees. *Held* that, as the purchase did not involve a transfer of the tenancy of the land in the sense of s 9 of the N.-W. P. Rent Act, nor any change in the relations between the landholder and the occupancy-tenant such as was prohibited by that law, the landholder was not entitled to possession of the land. LALMAN *v.* MANNU LAL

I. L. R., 6 All., 19

326. ——— Right of occupier of land —*Bom. Act I of 1865, s. 40—Right to trees on land.*—The occupier of land who does not come under s. 40 of the Bombay Survey and Settlement Act, 1865, has not, in the absence of agreement, any proprietary right to the trees growing on his land GOVIND PURSHOTAM KOLATKAR *v.* SUB-COLLECTOR AND DEPUTY CONSERVATOR OF FORESTS OF COLABA . . . . 6 Bom., A. C., 188

327. ——— Lien of mortgagee of guava trees after ejectment of tenant—*Trees planted by tenant.*—A raiyat mortgaged certain guava trees which he had planted on a portion of his holding. Subsequently the zamindar obtained a decree against the raiyat for ejectment, and after his ejectment the mortgagees obtained a decree on their mortgage deed. *Held,* in a suit between the mortgagees and the zamindar, that their lien on the trees was destroyed by the ejectment of the raiyat. PEARUN *v.* RAM NARAIN SINGH *alias* RUNNOO SINGH . . . 1 N. W., Ed. 1873, 213

328 ——— Right to hypothecate trees—*Tenant with right of occupancy.*—A tenant with a right of occupancy can only make a

329. ——— Right of usufructuary mortgagee—*Right to trees planted by him during tenure*—*Held* that, although defendant, usufruc-

KOBA MULL . . . . 1 Agra, 281

330. ——— Ex-proprietary tenant, Right of—*Nature of the right of occupancy—N.-W. P. Rent Act (XII of 1881), s. 7—Trees.*—In a suit for recovery of possession of zamindari property conveyed by sale-deed, including certain plots of land which were the defendant-vendor's sir, the lower Courts held, with reference to s. 7 of the N.-W. P. Rent Act (XII of 1881), that the defendant was entitled to hold possession of the said plots as ex-proprietary tenant, but as it appeared that they had fruit and other trees upon them, the Courts awarded the plaintiff possession of these trees on the ground that the nature of an ex-proprietary tenure did not entitle the holder to resist a claim of this

cujus est solum ejus est usque ad cœlum was applicable to the case by way of analogy, and that an ex-proprietary tenant had all the rights and incidents assigned by jurisprudence to the ownership of land, subject only to the restriction imposed upon the

I. L. R., 5 All., 121; Goluck Rana v. Nubo Soonduree Dassee, 21 W. R., 344, Mahomed Ali v. Bolakee Bhuggut, 24 W. R., 330; Ram Baran Ram

LANDLORD AND TENANT—*continued.*

20. PROPERTY IN TREES AND WOOD ON LAND—*continued.*

331. ——————— *Trees—Sale in execution of decree—N.-W. P. Rent Act (XII of 1881), ss. 7, 9.*—*Held* by the Full Bench that an ex-proprietor, who, under s. 7 of Act XII of 1881 (N.-W. P Rent Act), gets occupancy-rights in his sir land, obtains analogous rights in the trees upon such sir land A purchaser of proprietary rights in zamindari property at a sale in execution of a decree for money held by himself applied in execution of the decree for the attachment and sale of certain trees growing on the judgment-debtor's ex-proprietary holding. *Held* by the Full Bench, with reference to the provisions of ss 7 and 9 of Act XII of 1881 (N.-W. P. Rent Act), that the trees were not liable to attachment and sale in execution of the decree. *Per* STRAIGHT, *J.*—When a proprietor sells his rights, and becomes entitled under s. 7 of the Rent Act to the rights of an ex-proprietary tenant, he holds all rights in the land *quâ* such tenant, which he formerly held in his character as proprietor, and

cutting the trees down, he has the same right to enjoy the trees as he originally had JUGAL *v.* DEOKI NANDAN . . . I. L. R., 9 All, 88

332. ——— Property in trees growing on land—*Bengal Tenancy Act (VIII of 1885), s 23—Right of occupancy tenant to cut down trees—Right of occupancy-tenant to appropriate trees when cut down—Onus of proof—Custom—Suit for damages.*—The property in trees growing on land is, by the general law, vested in the proprietor of the land, subject, of course, to any custom to the contrary. Under s 23 of the Bengal Tenancy Act, the onus is on the landlord to show that a tenant with occupancy right is debarred from cutting down the trees on the land, and not on the tenant to prove a custom giving him the right to do so. The right to appropriate them when cut down, however, is a different question. In a suit by landlords against their tenants who had a right of occupancy for appropriating some mango trees growing on their land which they had cut down,—*Held* that the onus was rightly thrown on the tenants of proving a custom they alleged, giving them the right to sell the trees, and, on failure to prove such custom, they were liable to damages for so appropriating them. NAFAR CHANDRA PAL CHOWDHURI *v.* RAM LAL PAL

[I. L. R., 22 Calc., 742

333. ——————— An occupancy tenant has a right to cut down trees unless a custom to the contrary is proved by the landlord. GRIJA NATH ROY *v.* MIA ULLA NASOYA

[I. L. R., 22 Calc., 744 note

NAFAR CHANDRA PAL CHOWDHRY *v.* HAZARI NATH GHOSE . I. L. R., 22 Calc., 748 note

NUFFER CHUNDER GHOSE *v.* NUND LAL GOSSYAMY . . I. L. R., 22 Calc., 751 note

Contra PYARI LALL PAL *v.* NARAYAN MANDAL

[I. L. R., 22 Calc., 746 note

where it was held that the onus lay on the tenant to prove a custom allowing him to cut down trees.

334. ——— Trees growing on land—*Lease for purpose of clearing jungle land.*—Where a lease of a mouzah was granted for the express purpose of clearing jungle land and bringing it under cultivation, and no reservation of the right in the trees was made in the lease,—*Held* that the lessee had the right to appropriate the trees when cut. MON MOHINI GOOPTA *v.* RAGHOONATH MISSER

[I. L. R., 23 Calc., 209

permission of the village baiua (mandal), to cut down and appropriate agachha (valueless) trees for fuel. No payment was ever made for such permission. The defendants, the raiyats, cut down and appropriated some agachha trees grown upon the

Pal Chowdhuri v. *Ram Lal Pal, I. L. R., 22 Calc, 742,* applied. SAMSAR KHAN *v.* LOCHIN DASS

[I. L. R., 23 Calc, 854

336. ——— Trees, Sale of—*Occupancy-tenant—Such sale invalid—Act XII of 1881, s. 9.*—The trees upon an occupancy-holding, whether planted by the tenant himself or not, belong and attach to such holding, and like it are not susceptible of transfer by the tenant. IMDAD KHATUN *v.* BHAGIRATH . . I. L. R., 10 All., 159

337. ——— Right of tenant to cut down and sell trees.—The property in trees growing on a tenant's holding is by the general law vested in the zamindar, and a tenant is not entitled, in the absence of special custom, the burden of proving which is on him, to cut down and sell such trees.

LANDLORD AND TENANT—*continued.*

20. PROPERTY IN TREES AND WOOD ON LAND—*concluded.*

338. ——— Suit for possession of

sown trees which had been growing on an occupancy-holding must prove some custom or contract by which he is entitled to take such wood. The English law as to ownership under similar circumstances cannot be applied, and (*sed quære*) there is no general rule in India to decide that there is a right in the landlord or a right in the tenant by general custom to the fallen wood of self-sown trees. NATHAN *v.* KAMLA KUAR . . I. L. R., 13 All., 571

21. FORFEITURE.

(*a*) BREACH OF CONDITIONS

339. ——— Condition for forfeiture,

340.——— Condition for forfeiture—*Concurrent remedies for breach of conditions in*

whole. Nor is it usual, when a penalty is provided for breach of condition, to bring two suits—one to enquire into the existence of the breach, and the other to enforce the penalty CHUNDER NATH MISSER *v.* SIRDAR KHAN . . 18 W. R., 218

341.——— *Conveyance with agreement to re-purchase—Lease.*—*A* conveyed land to *B*, with a collateral agreement to re-purchase within a certain period, the right to redeem, however, being dependent upon the due performance by *A* of the conditions of a certain lease of the land in

S. C. CHIDAMBARA PILLAI *v.* MANIKKA CHETTI [I Mad., 63

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

342. ——— *Perpetual lease granted for consideration—Clause providing for forfeiture on rent being in arrears—Whether repayment of the consideration is a condition precedent to surrender of the lands*—Consideration paid for a lease is exhausted by the grant of the lease, and a tenant's forfeiture of the lease cannot, in the absence of a provision to that effect, operate so as to convert the original consideration into a debt which must be paid before the forfeiture can be enforced KAMMARAN NAMBIAR *v.* CHINDAN NAMBIAR . . I. L. R., 18 Mad., 32

343. ——— Breach of conditions in lease.—A breach of any of the stipulations in a lease does not cancel the lease or give a right to eject, unless there has been an express provision to that effect in the lease AUGUR SINGH *v.* MOHINEE DUTT SINGH . 2 W. R., Act X, 101

MAHOMED FAEZ CHOWDHRY *v.* SHIB DOOLAREE TEWAREE . . . . . 6 W. R., 103

TUMEEZOODDEEN CHOWDHRY *v.* SURWAR KHAN [7 W. R., 209

344. ——— *Ejectment—Raiyat with right of occupancy.*—A raiyat with a

v. DWARKANATH SOOKUL 2 W. R., Act X, 54

345. ——— *Improper use of land—Ejectment*—Where a tenant has been

MISSER *v.* RUPIKUN [I. L. R., 9 Calc., 609: 12 C. L. R., 300

346. ——— *Destruction of trees and alteration of cultivation by tenant—Right of re-entry.*—Some of the trees in a grove were

347. ——— *Forfeiture for*

condition could not be regarded as a mere *ad terrorem* clause, since, if it came to the selling up of the tenure for default, it made a great difference to the landlord whether the land had been properly cultivated or not. GOLAM ALI CHOWDHRY *v.* BHOBAI [25 W. R., 227

348. ——— Right to cancel tenancy—*Zamindar—Resumption of land for non-cultivation.*—A zamindar cannot put an end to the relation

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

of landlord and tenant, except in the manner provided by law. A tenancy is not determined by the mere fact that the tenant has allowed the land to remain uncultivated. DINABHANDU v. LOKANADHASAMI

[I. L. R., 6 Mad., 322

349. ———— *Non-payment of rent.*—Omission to pay rent may be a good ground for a suit for arrears of rent or for ejectment, but not for the cancelment of a pottah not otherwise impugned. UMRITHNATH CHOWDHRY v. KOONJ BEHARY SINGH . . W. R., F. B., 34

350. ———— *Non-payment of rent.*—The right to cancel a lease for non-payment of rent by a lease-holder not having a permanent or transferable interest in the land being given by s. 22, Act X of 1859, need not be provided for in the lease. KADIR GAZEE v. MOHADFEEZ DOSSIA

[6 W. R., Act X, 47

351. ———— Liability to have tenancy cancelled—*Gatkuli tenant—Non-payment of assessment.*—Where a gatkuli tenant omits to pay the assessment on his gatkuli land, he does not lose his right to the land unless some other person is put in possession by Government. Any one simply taking possession is merely a trespasser, against whom the gatkuli tenant would be entitled to recover. MALHARI VALAD RAGHOJI v. TUKARAM VALAD DARKOJI

[6 Bom., A. C., 66

352. ———— Non-payment of rent—*Lease, Construction of—Conditions for forfeiture.*—Where a lease of 1847 contained two provisions, one for the payment of R1,00 as rent and the other was stipulation for forfeiture and re-entry on default of payment, and by a solehnamah of 1848 that rent was put an end to, and in lieu thereof the lessor received back a portion of the land leased in 1847, but by a subsequent solehnamah of 1858 the lessees agreed to pay R334 as rent, but no new provision was made for re-entry, and no fresh stipulation for forfeiture,—*Held* that the clause of forfeiture and re-entry in respect of the R1,00 under the lease of 1847 did not apply to the R334 under the solehnamah of 1858. RUHMOONISSA v. SOOFUN JAN

[16 W. R., 244

353. ———— *Ejectment—Right of occupancy—Beng. Act VIII of 1869, s. 52.*—The mere omission to pay rent for five years does not of itself amount to forfeiture of a raiyat's [illegible]

is under a decree for arrears of rent unsatisfied within fifteen days from the passing of the decree. MUSTAFULLA v. NOORZAHAN

[I. L. R., 9 Calc., 808

354. ———— *Bengal Tenancy Act (VIII of 1885), s. 3, cl. 5, ss. 179, 175 (e).*—A stipulation in a patni lease that by reason of non-payment of rent by the patnidar he would forfeit his tenancy is not valid. MOHABUT ALI v. MAHOMED FAIZULLAH . . 2 C. W. N., 455

355. ———— Failure to pay rent at due date—*N.-W. P. Rent Act, XVIII of 1873, s. 93, cl. (c)—Suit for cancelment of lease—Breach of conditions involving forfeiture.*—The plaintiff, the representative in title of a lessor, sued under cl. (c), s. 93 of Act XVIII of 1873, for the cancelment of a lease, on the grounds, among others, that the lessees had paid the rent to the Collector, on account of the revenue due in respect of the estate, instead of to him, secondly, on the ground that they had failed to pay certain instalments of rent on the due dates; thereby committing breaches of the conditions of the lease involving its forfeiture. *Held* on the construction of the lease, with reference to the first ground, that [illegible]

of so doing) or demanded payment of the rent [illegible]

arrears of rent being due, irregularity and unpunctuality in the payment of the instalments of rent in question were not breaches of the conditions of the lease involving its forfeiture. ABLAKH RAI v. AHMAD KHAN . . I. L. R., 2 All., 437

356. ———— *Breach of conditions of lease—Delay in payment of rent—Right to interest.*—In strict law a farmer forfeits his lease by the withdrawal of the personal security given by him at the time of taking the farm. But cases of forfeiture are not favoured when no injury has [illegible]

for conditional forfeiture, but he cannot demand at once the absolute forfeiture of the property. ALUM CHUNDER SHAW CHOWDHRY v. MORAN

[W. R., 1864, Act X, 31

357. ———— Right to re-enter, Accrual of—*Relief against forfeiture for non-payment of rent.*—It is not absolutely necessary for a lessor to take legal measures for obtaining possession of the demised property on accrual of right of re-entry for breach of covenant. He may (if he can do so peaceably and quietly) take possession thereof without having recourse to civil proceedings (which are only necessary in case he apprehends resistance); and if he does so re-enter, he cannot be sued for trespass, inasmuch as the interest of the lessee becomes forfeited, and the lessor enters on what is in fact his own property. The mere fact of demanding rent in one year is not sufficient to create an obligation to make such a demand in subsequent years, or on failure thereof to

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

debar the right of re-entry. Relief may be granted by the Courts in India against forfeiture for non-payment of rent. A lessor who has re-entered on the demised property for breach of a particular condition can, when called upon to defend his position, plead other breaches which might have justified the re-entry, and cannot be restricted to prove only that under which he originally claimed re-entry GREAT EASTERN HOTEL COMPANY v. COLLECTOR OF ALLAHABAD . . . 2 Agra, Ex., O. C., 1

358. ——— *Use and occupation—Re-entry—Demand of rent—Stat. 32 Hen VIII, c. 34—Waiver.*—A covenant in a lease reserved to the lessor, on default of payment of rent, a power of re-entry, there being no mention in such covenant of a similar power being also reserved to his "heirs, successors or assigns" The lessor sold his rights in the property leased to third persons, and such third persons endeavoured to re-enter under the covenant *Held* that although re-entry was reserved only to

subsequent demands for rent, and there being no legal demand for rent on the last day on which rent at a date subsequent to the waiver fell due, the vendees were not entitled to make use of their right of re-entry. KRISTO NATH KOONDOO v. BROWN

[I. L. R., 14 Calc., 176

In a suit by the kanamdar to recover possession for non-payment of rent,—*Held* that this condition of redemption was intended as a penalty to secure regular payments of the rent, and that, such being the original intention of the parties, the penalty was one which ought to be relieved against. KOTTAL UPPI v. EDAVALATH THATHAN NAMBUDIRI 6 Mad., 258

360. ——— *Forfeiture for non-payment of rent—Transfer of reversion—Transfer of Property Act (IV of 1882), s. 6, cl. (b).*—A condition in a lease providing that the landlord may re enter on non-payment of rent is penal and

cl. (*b*). VAGURAN v. RANGAYYANGAR

[I. L R., 15 Mad., 125

361. ——— *Condition in mokurari lease for forfeiture on non-payment of rent.*—Where, in a mokurari lease, there was a condition that, in case of non-payment of one year's rent, and its falling into arrears, the mokurari settlement was to be cancelled, and default was made and a suit for ejectment was brought,—*Held* that, independently of the Rent Act, the defendants should be allowed in equity a reasonable time to pay the landlord's dues in order to prevent forfeiture MAHOMED AMEER v. PERYAG SINGH . I. L. R., 7 Calc., 566

[9 C. L. R., 185

362. ——— *Mulgaini lease, void for non-payment of rent or alienation—Relief against penalty.*—Where a perpetual lease was

payment of rent which accrued subsequently to those three years, as the condition must be held to have been intended to secure payment of the rent, and the penalty ought to be relieved against SUBBARAYA KAMTI v. KRISHNA KAMTI I. L. R., 6 Mad., 159

363. ——— *Condition restraining alienation—Alienation by act of law—*

Tamaya v. *Timapa Ganpaya, I. L. R., 7 Bom., 262,* and *Subbaraya* v *Krishna, I. L. R., 6 Mad., 159,* approved. NIL MADHAB SIKDAR v. NARATTAM SIKDAR . . . I. L. R., 17 Calc., 826

364. ——— *Mulgaini lease*

365. ——— *Non-payment of rent.*—The Court will not relieve against the forfeiture of a lease caused by non-payment of rent, although the lessor on previous occasions has waived the forfeiture. CUTENHO v. SOUZA . 1 Mad., 15

366. ——— Planting trees — *Liability to ejectment—Consent of landlord.*—*Held* that a raiyat having a right of occupancy forfeits his holding and is liable to ejectment therefrom if he plants trees

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

on a portion of his holding without the landlord's consent. JEWA RAM *v.* FUTTEH SINGH TEZ SINGH *v.* RAM DASS . Agra, F. B., 125 : Ed. 1874, 94

367. ——— *Right of tenants to plant trees without consent of zamindar.*—The question whether tenants have a right to keep up or renew existing baghs by planting new trees without the consent of zamindar must be determined with reference to the custom of the country JHONA SINGH *v.* NEAZ BEGUM 2 Agra, Pt. II, 183

368. ——— *Waste—Planting a mango tope on dry land.*—In the absence of

lord. LAKSHMANA *v.* RAMACHANDRA [I. L. R., 10 Mad., 351

369. ——— *Agricultural*

breach of the terms of his tenancy, and that the suit should be dismissed. VENKAYYA *v.* RAMASAMI [I. L. R., 22 Mad., 39

370. ——— *Muafidars of Government.*—*Held* that the plaintiffs, being mere muafidars of a moiety of the right of Government, had no right to plant trees themselves or to prevent the zamindars from planting the trees, as they had no right to the land. AZURROODEEN *v.* MOHUR SINGH . . . . 2 Agra, 165

371. ——— *Ejectment for planting trees*.—In an action of ejectment for plant-

372. ——— *Ejectment—Lia-*

373. ——— *Prohibition against planting trees and sinking wells.*—The plaintiff, the representative-in title of the lessor, sued under cl. (c), s. 93 of Act XVIII of 1873, for cancelment of a lease on the ground, amongst others, that the lessees had planted trees and sunk wells and had allowed their tenant to do the same without the lessor's consent, thereby committing a breach of the conditions of the lease involving forfeiture. *Held* that

planted trees or sunk wells, and allowed their tenants to do the same, without the lessor's consent. *Held* also that, assuming that the lessor was entitled, on that ground, to the cancelment of the lease, cancel-

RAI *v.* SALIM AHMED KHAN I. L. R., 2 All., 437

374. ——— **Sub-letting**—*Right of tenants to let their houses.*—Whether tenants are entitled to let their houses, or whether, in the event of their letting houses, the zamindar can claim forfeiture, must be determined with reference to the custom of the village. RAM BUKSH SINGH *v.* PURDUMUN KISHORE . . . 2 Agra, Pt. II, 202

375. ——— *Covenant not to sub-let, What constitutes breach of.*—Where there is a covenant not to sub-let, what constitutes a sublease causing forfeiture? *Held* that the lessee must transfer all his rights of collecting rents and of suing

convert an agency into a sub-lease. ALUM CHUNDER SHAW CHOWDHRY *v.* MORAN [W. R., 1864, Act X, 31

376. ——— *N.-W. P. Rent Act (XII of 1881), s. 93 (b)—Act inconsistent with the purpose for which the land was let—Sub-lease*

377. ——— **Alienation of tenure**—*Liability to forfeiture.*—A tenant who alienates his tenure does not thereby subject it to forfeiture. DWARKANATH MISREE *v.* KANAYE SIRDAR [16 W. R., 111

And *see* CASES UNDER RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

378. ——— **Transfer of lease**—*Effect of unlicensed transfer of lease—Suit for ejectment.*—The plaintiffs were mokurari lease-holders, prior to whose lease the proprietor granted a pottah of the same land to *A*, with a stipulation that *A* should

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

not let the land to others without leave. *A* afterwards, with the proprietor's consent, sold his lease to *B*, who again, without such consent, sold his rights to the defendants. The plaintiffs sued to eject the defendants as trespassers. *Held* that, as there was nothing in the condition on which the plaintiffs (as exercising the proprietor's rights) rely that implies [illegible]

between *B* and any other parties. And therefore the plaintiffs were not entitled to eject the defendants. GORDON, STUART & CO *v.* TAYLOR [W. R., F. B., 9

379. ———— Transfer of tenure—*Transfer of non-transferable tenure.*—The transfer of a tenure not transferable by the custom of the country [illegible]

[illegible]

380. ———— *Cuttack, Tenures in—Sarbarakari tenures—Alienation without consent of landlord—Alienation by one of several co-sharers.*—The alienation of a sarbarakari tenure in Cuttack, and *à fortiori* the alienation of any portion of such tenure, is invalid without the consent of the landlord. Assuming that the sale of such a tenure would entitle the landlord to re-enter as upon a forfeiture, the sale of a portion thereof by one of several co-sharers would not work a forfeiture of the whole tenure DASSORATHY HURI CHUNDER MAHAPATTRA *v.* RAMA KRISHNA JANA

[I. L. R., 9 Calc., 526: 13 C. L. R., 114

381. ———— *Bengal Tenancy* [illegible]

See CHANDRA MOHUN MOOKHOPADHAYA *v.* BISSESSAR CHATTERJEE . . 1 C. W. N., 158

KALINATH CHAKRAVARTI *v.* UPENDRA CHANDRA CHOWDHRY . . I. L. R., 24 Calc., 212

and WILSON *v.* RADHA DULARHI KOER . [2 C. W. N., 63

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

382. ———— *Tenant parting with portion of his holding—Right of landlord to eject sub-tenant and recover possession.*—The transfer by a raiyat with a right of occupancy of a part of his holding does not entitle the landlord to recover possession of the land transferred by ejecting the transferee, in the absence of evidence to show that by custom such transfer is not allowed. *Durga Charan Roy* v. *Pandab Nath, Letters Patent appeal in Appeal from Appellate Decree No. 1440 of 1892*, followed. *Kabil Sardar* v. *Chandra Nath Nag Chowdhry, I. L. R., 20 Calc., 590*, referred to. *Tirthanund Thakur* v. *Motty Lal Misra, I. L. R., 3 Calc., 744*, *Dwarka Nath Misser* v. *Harrish Chandra, I. L. R., 4 Calc., 925*; and *Narendra Nath Roy* v. *Ishan Chandra Sen, 13 B. L. R., 274*. *22 W. R., 22*, distinguished DOORGA PRASAD SEN *v.* DOULA GAZEE . . . 1 C. W. N., 160

383. ———— The transfer by a raiyat of a portion of his non-transferable tenure without the consent of the landlord does not work a forfeiture and the landlord is not entitled to recover khas possession, but is entitled to a declaration that the transfer of a portion of his holding which has not been made with his written consent is not binding on him as provided by s. 88 of the Bengal Tenancy Act. *Kabil Sardar* v. *Chunder Nath Nag Chowdhry, I. L. R., 20 Calc., 590*, followed GOZAFFER HOSSEIN *v.* DABLISH

[1 C. W. N., 162

384. ———— *Assignment of lease contrary to term of lease—Waiver of forfeiture, Effect of—Damages on forfeiture for breach of covenant to repair*—An assignment by way of mortgage of leasehold property in terms appropriate to fazendari property, the lease and mesne assignments being handed over to the mortgagee of execution of the deed and a subsequent assignment of the equity of redemption of the same property in terms appropriate to freehold property, will, in the absence of any circumstance to lead the assignees to believe that the assignor had any further interest in the property, operate as assignments of the lease. Where there is a proviso in a lease for forfeiture on assignment without previous license of the lessor, the acceptance by the lessor of rent [illegible]

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

on a portion of his holding without the landlord's consent. JEWA RAM *v.* FUTTEH SINGH. TEZ SINGH *v.* RAM DASS . Agra, F. B., 125; Ed. 1874, 94

367. ——— *Right of tenants to plant trees without consent of zamindar.*—The question whether tenants have a right to keep up or renew existing baghs by planting new trees without the consent of zamindar must be determined with reference to the custom of the country. JHONA SINGH *v.* NEAZ BEGUM 3 Agra, Pt. II, 163

368. ——— *Waste—Planting a mango tope on dry land.*—In the absence of [illegible]

[illegible] lord. LAKSHMANA *v.* RAMACHANDRA [I. L. R., 10 Mad., 351

[illegible]

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371. ——— *Ejectment for planting trees.*—In an action of ejectment for planting trees, [illegible]

372. ——— *Ejectment—Liability to forfeiture of entire holding by planting on one portion.*—A tenant planted trees on one of the plots of land comprising his holding, an act which rendered him liable to ejectment. He paid rent, not in respect of [illegible] entire holding [illegible] not merely fr[illegible] the trees, but [illegible] RAJAH OF HANSI [illegible] . . I. L. R., 4 All., 174

[illegible] ment of a lease on the ground, amongst others, that the lessees had planted trees and sunk wells and had allowed their tenant to do the same without the lessor's consent, thereby committing a breach of the conditions of the lease involving forfeiture. *Held* that the condition as to the planting of trees and sinking wells being merely a prohibition, and not a condition the breach of which involved the forfeiture of the lease, could not be cancelled because the lessees had [illegible] tenants [illegible] *Held* [illegible] itled, on [illegible] cancel- [illegible]

374. ——— Sub-letting—*Right of tenants to let their houses.*—Whether tenants are entitled to let their houses, or whether, in the event of their letting houses, the zamindar can claim forfeiture, must be determined with reference to the custom of the village. RAM BUKSH SINGH *v.* PURDUMUN KISHORE . . . 2 Agra, Pt. II, 202

375. ——— *Covenant not to sub-let, What constitutes breach of.*—Where there is a covenant not to sub-let, what constitutes a sub- [illegible]

declaration of the sub-tenant's right to all sums collected beyond that amount, are not sufficient to convert an agency into a sub-lease. ALUM CHUNDER SHAW CHOWDHRY *v.* MOHAN [W. R., 1864, Act X, 31

376. ——— *N.-W. P. Rent Act (XII of 1881), s. 93 (b)—Act inconsistent with the purpose for which the land was let—Sub-lease of agricultural land to a theatrical company.*—An agricultural tenant, at a time when there were no crops growing on his holding, let part of it temporarily to a theatrical company for the purpose of their holding performances thereon. *Held* that this was not an act sufficient to cause a forfeiture of the tenancy within the meaning of s. 93 (b) of Act XII of 1881. YUSUF ALI KHAN *v.* HIRA I. L. R., 20 All., 469

377. ——— Alienation of tenure—*Liability to forfeiture.*—A tenant who alienates his tenure does not thereby subject it to forfeiture. DWARKANATH MISREE *v.* KANAYE SIRDAR [16 W. R., 111

And *see* CASES UNDER RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

378. ——— Transfer of lease—*Effect of unlicensed transfer of lease—Suit for ejectment.*—The plaintiffs were mokurari lease-holders, prior to whose lease the proprietor granted a pottah of the same land to *A*, with a stipulation that *A* should

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

not let the land to others without leave. *A* after-

landlord, without reference to the arrangement between *B* and any other parties. And therefore the plaintiffs were not entitled to eject the defendants GORDON, STUART & CO *v.* TAYLOR

[W. R., F. B., 9

379. ———— Transfer of tenure—*Transfer of non-transferable tenure*—The transfer of a tenure not transferable by the custom of the country

[9 W. R., 14]

380. ———— *Cuttack, Tenures in—Sarbarakari tenures—Alienation*

381. ———— *Bengal Tenancy Act (VIII of 1885)—Occupancy-raiyat transfer-*

See CHANDRA MOHUN MOOKHOPADHAYA *v.* BISSESSAR CHATTERJEE . . 1 C. W. N., 158

KALINATH CHAKRAVARTI *v.* UPENDRA CHANDRA CHOWDHRY . . I. L. R., 24 Calc., 212

and WILSON *v.* RADHA DULARHI KOER

[2 C. W. N., 63

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

382. ———— *Tenant parting with portion of his holding—Right of landlord to eject sub-tenant and recover possession.*—The transfer by a raiyat with a right of occupancy of a part of his holding does not entitle the landlord to recover possession of the land transferred by ejecting the transferee, in the absence of evidence to show that by custom such transfer is not allowed. *Durga Charan Roy* v. *Pandab Nath, Letters Patent*

Chandra, I. L. R., 4 Calc., 925, and *Narendra Nath Roy* v. *Ishan Chandra Sen, 13 B. L. R., 274*. *22 W. R., 22*, distinguished DOORGA PRASAD SEN *v.* DOULA GAZEE . . . 1 C. W. N., 160

383. ———— The transfer by a raiyat of a portion of his non-transferable tenure without the consent of the landlord does not work a forfeiture and the landlord is not entitled to recov

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[1 C. W. N., 162

384. ———— *Assignment of*

equity of redemption of the same property in terms

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

the premises into the state of repair in which they ought to be left, applies where a term has ceased by forfeiture as well as where it has expired by efflux of time. SARAFALI TAYABALI *v.* SUBBAYA BATEBAYA . . . I. L. R., 20 Bom., 439

385. ——— Waiver of forfeiture—*Acceptance of rent.*—The acceptance of the rent by the landlord after the institution of a suit to recover possession of the land is not a waiver of a forfeiture by the tenant under a condition in the lease. A tenant, upon payment of all costs of the suit, will be

386. ——— *Acceptance of*

[18 W. R., 218

387. ——— *Acceptance of rent*

on the lessee's part to execute a kabuliat for the excess lands in the following terms: "If at the fixed time stated above, we do not take an Ameen and cause measurement to be made, you will appoint an Ameen and cause the entire land of the said chur to

a settlement of such excess land, as well as of the land

the lessees to execute a kabuliat for the rent of certain excess lands, and praying that the lessees might be ejected, the lessees pleaded that the lessor had waived his right to enforce the forfeiture by subsequent receipt of rent. It appeared that payments had been made to the lessor by the lessees, which were accepted as rent, but were kept in suspense, subject to payment by the lessees of the "remaining amount." *Held* that such a qualification did not make the payments anything else than payments of rent, and that the lessor had waived his right to insist on re-entry on the lessees' failure to measure the lands, or execute a kabuliat when called on to do so. *Davenport* v. *Queen, L. R., 3 App. Cas., 155,* followed. KALI KRISHNA TAGORE *v.* FUZLE ALI CHOWDHRY

[I. L. R., 9 Calc., 843: 12 C. L. R., 502

(*b*) DENIAL OF TITLE.

388. ——— Denial by tenant of title of landlord—*Refusal to pay rent where decree is obtained for possession against landlord.*—As a general rule, where a person takes land from another and pays rent to him, he cannot deny the title of his landlord; but he is not precluded or estopped from

obtained a decree against the landlord for the land. Even if a decree has been passed against the person from whom the landlord derives his title, he is entitled to recover his rent until the decree is put in force. BURN & CO *v.* BUSHO MOYEE DASSEE

[14 W. R., 85

389. ——— *Non-payment of rent—Relief against—Co-sharers—Lease from one of several co-sharers—Denial of lessor's title—Estoppel.*—A person taking a lease from one of

arrears of rent up to date of decree, together with interest and costs of suit, within three months. This

390. ——— *Assignee of*

tenure in favour of the landlord or warrant a suit by the landlord for khas possession. DOORGA KRIPA ROY *v.* JANOO LATHAK . . 18 W. R., 465

391. ——— *Liability to ejectment.*—Where it is proved that one man has been the tenant of another, it is necessary, before the

MOJOOMDAR . . . . 25 W. R., 319

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

392. ——————— *Forfeiture of tenure—Ejectment.*—The weight of authority of the decisions of the High Court is in favour of the view that when a tenant directly repudiates the relation of landlord and tenant and sets up an adverse title in himself, the landlord is entitled to take possession irrespective of the period during which the tenant may have been in possession. SHUMSHER ALI *v.* DOYA BIBI . . . . 8 C. L. R., 150

393 ——————— *Right of landlord to evict on tenant's denying his title.*—A tenant, repudiating the title under which he entered, becomes liable to immediate eviction at the option of the landlord. VISHNU CHINTAMAN *v.* BALAJIBIN RAGHUJI [I. L. R., 12 Bom., 352

394. ——————— *A*, a raiyat with right of occupancy, in a rent-suit brought against him by *B*, the purchaser of an aima mehal, denied the existence of the relationship of landlord and

See SUTTYABHAMA DASSEE *v.* KRISHNA CHUNDER CHATTERJEE . . . I. L. R., 6 Calc., 55 [6 C. L. R., 375

and ISHAN CHUNDER CHATTOPADHYA *v.* SHAMA CHURN DUTT . . . I. L. R., 10 Calc., 41 [12 C. L. R., 414

395 ——————— *Bengal Tenancy Act (VIII of 1885), s. 178—Forfeiture completed before passing of Act.*—The plaintiffs, purchasers of a mokurari jama, sued to eject the defendants, on

forfeiture being complete before the passing of the Act, the case was not affected by s 178 of that Act, and must be governed by the old law. Under the decided cases before the Bengal Tenancy Act such a denial by a tenant of his landlord's title created a forfeiture. *Satyabhama Dassee* v. *Krishna*

DEBIRUDDI *v.* ABDUR RAHIM [I. L. R., 17 Calc., 196

396. ——————— *Law as to*

Rent Law which was in force before the passing of the Bengal Tenancy Act ANANDA CHANDRA MONDUL *v.* ABRAHIM SOLEMAN . 4 C. W. N., 42

397. ——————— *Bengal Tenancy Act (VIII of 1885), s. 49, cl. (b), and s. 178*—The plaintiffs sued to eject the defendant from certain land alleging that it formed part of their holding, and that the defendant was their sub-tenant The defendant denied the plaintiff's title, and set up the title of a third person adverse to that of the plaintiffs. The lower Appellate Court found that the defendant was the plaintiff's tenant, and both the lower Courts held that the defendant, by denying the title of his landlord, had forfeited his rights as a tenant, and was therefore liable to be treated as a trespasser, and as such to be evicted

398. ——————— *Suit to recover khas possession—Successful denial of the relationship of landlord and tenant in previous rent-suits, Effect of—Forfeiture—Estoppel.*—The plaintiffs, owners of a dar-patni talukh, had sued defendant No 1 for the rents of 1296-97. The defendant

Appellate Court, however, on the ground that the

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

the premises into the state of repair in which they ought to be left, applies where a term has ceased by forfeiture as well as where it has expired by efflux of time. SARAVALI TAYABALI *v.* SUBBAYA BATEBAYA . . . I. L. R., 20 Bom., 439

385. ———— Waiver of forfeiture—

386. ———————— *Acceptance of rent.*—Receipt of rent is not *per se* a waiver of every previous forfeiture; it is only evidence of a waiver. CHUNDER NATH MISSER *v.* SIRDAR KHAN [18 W. R., 218

387. ———————— *Acceptance of*

on the lessee's part to execute a kabulat for the excess lands in the following terms: "If at the fixed time stated above, we do not take an Ameen and cause measurement to be made, you will appoint an Ameen and cause the entire land of the said chur to

certain excess lands, and praying that the lessees might be ejected, the lessees pleaded that the lessor had waived his right to enforce the forfeiture by subsequent receipt of rent It appeared that payments had been made to the lessor by the lessees, which were accepted as rent, but were kept in suspense, subject to payment by the lessees of the "remaining amount." *Held* that such a qualification did not make the payments anything else than payments of rent, and that the lessor had waived his right to insist on re entry on the lessees' failure to measure the lands, or execute a kabuliat when called on to do so. *Davenport* v. *Queen, L. R., 3 App. Cas., 155,* followed. KALI KRISHNA TAGORE *v.* FUZLE ALI CHOWDHRY [I. L. R., 9 Calc., 843 : 12 C. L. R., 592

(*b*) DENIAL OF TITLE.

388. ———— Denial by tenant of title of landlord—*Refusal to pay rent where decree is obtained for possession against landlord.*—As a general rule, where a person takes land from another and pays rent to him, he cannot deny the title of his landlord; but he is not precluded or estopped from

obtained a decree against the landlord for the land. Even if a decree has been passed against the person from whom the landlord derives his title, he is entitled to recover his rent until the decree is put in force. BURN & CO. *v.* BUSHO MOYEE DASSEE [14 W. R., 85

389. ———————— *Non-payment of rent—Relief against—Co-sharers—Lease from one of several co-sharers—Denial of lessor's title —Estoppel.*—A person taking a lease from one of several co-sharers cannot dispute his lessor's exclusive title to receive the rent or sue in ejectment. The

arrears of rent up to date of decree, together with interest and costs of suit, within three months. This

390. ———————— *Assignee of*

391. ———————— *Liability to*

MOJOOMDAR . . . . 25 W. R., 319

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

392. ———— *Forfeiture of*

himself, the landlord is entitled to take possession irrespective of the period during which the tenant may have been in possession. SHUMSHER ALI *v.* DOYA BIBI . . . . 8 C. L. R., 150

393. ———— *Right of landlord to evict on tenant's denying his title.*—A tenant, repudiating the title under which he entered, becomes liable to immediate eviction at the option of the landlord. VISHNU CHINTAMAN *v.* BALAJIBIN RAGHUJI [I. L. R., 12 Bom., 352

394. ———— *A*, a raiyat with right of occupancy, in a rent-suit brought against him by *B*, the purchaser of an aima mehal, denied the existence of the relationship of landlord and

[I. L. R., 6 Calc., 436

See SUTTYABHAMA DASSEE *v.* KRISHNA CHUNDER CHATTERJEE . . . I. L. R., 6 Calc., 55 [6 C. L. R., 375

and ISHAN CHUNDER CHATTOPADHYA *v.* SHAMA CHURN DUTT . . . I. L. R., 10 Calc., 41 [12 C. L. R., 414

395. ———— *Bengal Tenancy Act (VIII of 1885), s. 178—Forfeiture completed before passing of Act.*—The plaintiffs, purchasers of a mokurari jama, sued to eject the defendants, on ...en statement been decided laintiffs' title. The denial the Bengal Tenancy Act came into operation *Held* that the forfeiture being complete before the passing of the Act, the case was not affected by s 178 of that Act, and must be governed by the old law. Under the decided cases before the Bengal Tenancy Act such a denial by a tenant of his landlord's title created a forfeiture. *Satyabhama Dassee v. Krishna Chunder Chatterjee, I. L. R., 6 Calc., 55*, and *Ishan Chunder Chattopadhya v Shama Churn Dutt, I. L. R., 10 Calc., 41*, referred to But *semble*—

Act, and therefore expressly excluded by s. 178 DEBIRUDDI *v.* ABDUR RAHIM [I. L. R., 17 Calc., 196

396. ———— *Law as to*

DUL *v.* ABRAHIM SOLEMAN . 4 C. W. N., 42

397. ———— *Bengal Tenancy Act (VIII of 1885), s. 49, cl (b), and s. 178*—The plaintiffs sued to eject the defendant from certain land alleging that it formed part of their holding, and that the defendant was their sub-tenant. The defendant denied the plaintiff's title, and set up the title of a third person adverse to that of the plaintiffs. The lower Appellate Court found that the defendant was the plaintiff's tenant, and both the lower Courts held that the defendant, by denying the title of his landlord, had forfeited his rights as a tenant, and was therefore liable to be treated as a trespasser, and as such to be evicted

evicted from his holding except after notice to quit, as prescribed in s. 49, cl. (*b*), of the Bengal Tenancy Act *Debiruddi v. Abdur Rahim, I. L. R., 17 Calc., 196*, followed DHORA KAIRI *v.* RAM JEWAN KAIRI . . I. L. R, 20 Calc., 101

398. ———— *Suit to recover*

No 1 for the rents of 12 6-97 The defendant

Appellate Court, however, on the ground that the denial of the relationship of landlord and tenant does not operate as a forfeiture, modified the Munsif's decree by declaring the plaintiff's title as landlord and holding that they were not entitled to khas possession. *Held* that the rule that a denial of the relationship of landlord and tenant does not entail a forfeiture does not apply where that denial is given effect to by a decree of Court. It having been found in this case that the land belonged to the plaintiffs and it having been found in the previous suit that the defendants are not their tenants, the defendants have no right to remain upon the land, and the

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

the premises into the state of repair in which they ought to be left, applies where a term has ceased by forfeiture as well as where it has expired by efflux of time. SARAFALI TAYABALI *v.* SUBRAYA BATERAYA . . . I. L. R., 20 Bom., 439

385. ———— Waiver of forfeiture—*Acceptance of rent.*—The acceptance of the rent by the landlord after the institution of a suit to recover possession of the land is not a waiver of a forfeiture by the tenant under a condition in the lease. A tenant, upon payment of all costs of the suit, will be relieved from the consequence of such forfeiture, in accordance with the practice of Courts of Equity in England and America. TIMMARSA PURANIK *v.* BADYIA . . . 2 Bom., 70: 2nd Ed., 66

386. ———— *Acceptance of rent.*—Receipt of rent is not *per se* a waiver of every previous forfeiture, it is only evidence of a waiver. CHUNDER NATH MISSER *v.* SIRDAR KHAN [18 W. R., 218

387. ———— *Acceptance of rent.*—A lease provided that every four years a measurement should be made either by the lessor or

cause measurement to be made, you will appoint an Ameen and cause the entire land of the said chur to be measured, and no objection on the ground of our recording or not our presence on such measurement chitta shall be entertained, and we will duly file a separate dowl kabuliat for the excess rent that will be found after deducting the settled land of the dowl executed by us from the land settled therein. If we

the lessees to execute a kabuliat for the rent of certain excess lands, and praying that the lessees might be ejected, the lessees pleaded that the lessor had waived his right to enforce the forfeiture by subsequent receipt of rent It appeared that payments had been made to the lessor by the lessees, which were accepted as rent, but were kept in suspense, subject to payment by the lessees of the

called on to do so *Davenport* v. *Queen, L. R., 3 App. Cas*, *155*, followed. KALI KRISHNA TAGORE *v.* FUZLE ALI CHOWDHRY [I. L. R, 9 Calc., 843: 12 C. L. R., 592

(b) DENIAL OF TITLE.

388. ———— Denial by tenant of title of landlord—*Refusal to pay rent where decree is obtained for possession against landlord.*—As a general rule, where a person takes land from another and pays rent to him, he cannot deny the title of his landlord; but he is not precluded or estopped from

obtained a decree against the landlord for the land. Even if a decree has been passed against the person from whom the landlord derives his title, he is entitled to recover his rent until the decree is put in force. BURN & Co. *v.* BUSHO MOYEE DASSEE [14 W. R., 85

389. ———— *Non-payment of rent—Relief against—Co-sharers—Lease from one of several co-sharers—Denial of lessor's title—Estoppel.*—A person taking a lease from one of

arrears of rent up to date of decree, together with interest and costs of suit, within three months. This decree was reversed by the District Judge on appeal, who awarded possession of the land to the plaintiff, on

390. ———— *Assignee of*

ROY *v.* JANOO LATHAK . . 18 W. R., 465

391. ———— *Liability to*

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

392. ———— *Forfeiture of*

himself, the landlord is entitled to take possession irrespective of the period during which the tenant may have been in possession. SHUMSHER ALI *v.* DOYA BIBI . . . . 8 C. L. R., 150

393. ———— *Right of landlord to evict on tenant's denying his title.*—A tenant, repudiating the title under which he entered, becomes liable to immediate eviction at the option of the landlord. VISHNU CHINTAMAN *v.* BALAJIBIN RAGHUJI [I. L. R., 12 Bom., 352

394. ———— *A*, a raiyat with right of occupancy, in a rent-suit brought against him by *B*, the purchaser of an aima mehal, denied the existence of the relationship of landlord and tenant between himself and *B*. on the ground that the lands occupied by him were not included in the

See SUTTYABHAMA DASSEE *v.* KRISHNA CHUNDER CHATTERJEE . . I. L. R., 6 Calc., 55 [6 C. L. R., 375

and ISHAN CHUNDER CHATTOPADHYA *v.* SHAMA CHURN DUTT . . I. L. R., 10 Calc., 41 [12 C. L. R., 414

395. ———— *Bengal Tenancy Act (VIII of 1885), s. 178—Forfeiture completed before passing of Act.*—The plaintiffs, purchasers of a mokurari jama, sued to eject the defendants, on ... ement ... ecided ... title, ... denial ... Bengal ... at the ... ng of ... f that Act, and must be governed by the old law. Under the decided cases before the Bengal Tenancy Act such a denial by a tenant of his landlord's title created a forfeiture. *Satyabhama Dassee v. Krishna Chunder Chatterjee, I. L. R., 6 Calc., 55,* and *Ishan Chunder Chattopadhya v. Shama Churn Dutt, I. L. R., 10 Calc., 41,* referred to But *semble*—

DEBIRUDDI *v.* ABDUR RAHIM [I. L. R., 17 Calc., 198

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

396. ———— *Law as to*

Rent Law which was in force before the passing of the Bengal Tenancy Act. ANANDA CHANDRA MONDUL *v.* ABRAHIM SOLEMAN . 4 C. W. N., 42

397. ———— *Bengal Tenancy* ... —The ... ertain ... lding, ... The ... et up the title of a third person adverse to that of the plaintiffs The lower Appellate Court found that the defendant was the plaintiff's tenant, and both the lower Courts held that the defendant, by denying the title of his landlord, had forfeited his rights as a tenant, and was therefore liable to be treated as a trespasser, and as such to be evicted

398. ———— *Suit to recover*

No 1 for the rents of 1296-97 The defendant denied the relationship of landlord and tenant, and the plaintiffs withdrew the suit They brought another suit for the rents of 1298-99, and were met by the same defence, this suit was ultimately dismissed on the ground that there was no relationship of landlord and tenant between the parties. Upon

relationship of landlord and tenant does not entail a forfeiture does not apply where that denial is given effect to by a decree of Court It having been found in this case that the land belonged to the plaintiffs and it having been found in the previous suit that the defendants are not their tenants, the defendants have no right to remain upon the land, and the

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

plaintiffs are entitled to khas possession. *Debiruddi v. Abdur Rahim, I. L. R., 17 Calc., 196,* distinguished. NILMADHAB BOSE v. ANANT RAM BAGDI [2 C. W. N., 755

399. ——— *Suit for eject-*

DEBIA v. BHYRUB CHUNDER PATTRO [25 W. R., 147

400. ——— *Ejectment, Suit*

tion in the former suit, against the same defendant and three others claiming under the same title as himself, the defence that the land was lakhiraj was set up by all *Held* that the case fell within the principle of the case of *Suttyabhama Dassee v. Krishna Chunder Chatterjee, I. L. R., 6 Calc., 55,* and that the plaintiff, who had successfully proved that he had collected rents from the predecessors of the defendants, was entitled to evict them as trespassers on their failure to prove their lakhiraj title. ISHAN CHUNDER CHATTOPADHYA v SHAMA CHURN DUTT I. L. R., 10 Calc., 41; 12 C. L. R., 414

401. ——— *Setting up permanent tenure.*—In a suit for ejectment, where the defendants set up a right as a permanent tenant,—*Held* that the setting up of this right was a repudiation of the landlord's title for which he was liable to immediate ejectment. BABA v. VISHVANATH JOSHI [I. L. R., 8 Bom., 228

402. ——— *Suit for ejectment—Cause of action—Written statement.*—*P* and *R* brought a suit for ejectment on the allegation that their tenants had failed to come to a settlement in respect of a certain jote, and that a notice to quit

been and still were in possession of the same as tenants; but dismissed the suit on the ground that the service of notice had not been proved. *Held* (on

403. ——— *Forfeiture by alienation—Written statement—Cause of action*—Lands in Malabar were demised on anubhavom tenure. Some of them were alienated by the tenant, but the landlord subsequently accepted rent. More than twelve years after the alienation, the landlord

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

sued to eject the tenant on the ground that the tenure was thereby forfeited. The tenant for the first time in his written statement denied the landlord's title. *Held* that the plaintiff could not recover in this suit on the ground of the denial of his title in the written statement. MADAVAN v. ATHI NANGIYAR . I. L. R., 15 Mad, 123

404. ——— *Suit for ejectment—Repudiation of title—Setting up different*

tenure as he alleged, the defendant again set up the howladari lease under which he admitted he had

in Bengal. *Baba v. Vishvanath Joshi, I. L. R., 8 Bom., 228,* dissented from. KALI KRISHNA TAGORE v. GOLAM ALLY . I. L. R., 13 Calc., 248

The principle laid down in *Vivian v. Moat, L. R., 16 Ch. D., 730,* is not applicable to this country. KALI KISHEN TAGORE v. GOLAM ALI [I. L. R., 13 Calc., 3

405 ——— *Tenant setting up a permanent lease—Notice to quit—Ejectment suit*—The plaintiff sued for possession of certain land which had been demised to him by the first

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

had not received notice to quit, the defendant pleaded an alternative defence he was entitled to make, and could not therefore be regarded as having consented to the contract of yearly tenancy (which was alleged by the plaintiff) being treated as cancelled. PURSHOTAM BAPU *v.* DATTATRAYA

[I. L. R., 10 Bom., 669

406. ———— *Assertion of mulgeni (permanent) tenure—Right to notice to quit.*—The setting up of a mulgeni right by a tenant is not a disclaimer of title such as disentitles him to a notice to quit in determination of the tenure. UNHAMMA DEVI *v.* VAIKUNTA HEGDE

[I. L. R., 17 Mad., 218

407. ———— *Bombay Land Revenue Code (Bom Act V of 1879), s. 84—Transfer of Property Act (IV of 1882), ss 111 and 117*

action to enable the lessor to recover possession without notice to quit The object of s. 84 of the Land Revenue Code is to define the nature of contract of tenancy, but the landlord's right of forfeiture arising from denial of his title is no part of the contract of tenancy, but is a right which the law implies in all cases from the relationship of landlord and tenant. If the Legislature had intended to exclude the right of forfeiture in cases of annual tenancies, there would have been express provision to that effect VENKAJI KRISHNA NADKARNI *v.* LAKSHMAN DEVJI KANDAR

[I. L. R., 20 Bom., 354

408. ————

the Transfer of Property Act are governed by the general rule that a tenant who impugns his

409. ———— *Denying landlord's title or parting with holding—Bengal Tenancy Act (VIII of 1885), s. 44—Grounds of forfeiture*—Parting with possession of a holding or denying the title of the person under whom a non-occupancy-raiyat holds is not a ground of forfeiture, and a non-occupancy-raiyat cannot be ejected except on the grounds enumerated in s. 44 of the Bengal Tenancy Act CHANDRA MOHUN MOOKHOPADHAYA *v.* BISSESSWAR CHATTERJEE . . 1 C. W. N., 158

See DURGA PROSAD SEN *v.* DOULA GAZEE

[1 C. W. N., 160

410. ———— *Transfer of Property Act (IV of 1882), s. 2 (b) and (c) and ss. 105, 111 (g)—Maurasi-mokurari tenure.*—A lessor brought a suit for ejectment of the lessee for denying his title and asserting title in herself. The defendant in the Court below denied having renounced the title, and pleaded that a maurasi-

a maurasi-mokurari lease being only a lease in perpetuity as defined in s. 105 of the Transfer of Property Act, and not a conveyance in fee, it is subject to forfeiture by renunciation of the lessor's title under s. 111 (*g*). S 2 (*b*) and (*c*) do not apply, as even before the Transfer of Property Act such a lease under similar circumstances would have been liable to forfeiture under the general law. MONMOHINI DASSI *v.* KALI DAS AHIRI . . . . . 2 C. W. N., 292

411. ———— *Plea of sale by landlord to his tenant—Suit for possession by landlord before Mamlatdar.*—In a possessory suit

landlord, in which case the tenant no longer holds under a title derived from the landlord. VEDU *v.* NILKANTH . . I. L. R., 22 Bom., 428

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE.

412. ———— Verbal relinquishment—*Sufficiency of relinquishment*—The mere use of

[24 W. R., 118

413. ————
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10 W. R., 67

414. ———— *Relinquishment of tenure.*—When a raiyat, without giving any notice, goes away from the land he has occupied, and neither

LANDLORD AND TENANT—*continued.*

22. *ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—continued.*

[24 W. R., 544

415. ———— *Determination*

mittedly in arrears of kist. In a suit by plaintiff to recover the land, it was contended that non-cultivation and non-payment of rent for a considerable

RAJAGOPALA AYYANGAR v. COLLECTOR OF CHINGLEPUT . . . 7 Mad., 98

416. ———— *Surrender of tenancy*—Mere non-occupation and non-cultivation

SOYARE PRABHU KANOLEKAR
[I. L. R., 8 Bom., 164

VENKATESH NARAYAN PAL v. KRISHNAJI ARJUN
[I. L. R., 8 Bom., 160

418. ———— Abandonment of portion

419. ———— Abandonment of share of holding—*Separated member of Hindu family.*—

LANDLORD AND TENANT—*continued.*

22. *ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—continued.*

Where a separation takes place in a joint Hindu family, and one member becomes the owner of a khas share, being a portion of land with a house, which (after living in it for some time) he eventually abandons, the zamindar is entitled to deal with it in the same way as he is entitled by law to deal with the abandoned holding of a cultivating raiyat. LALLA NUKCHED LALL v. FUTTEH BAHADOOR LALL
[24 W. R., 39

420. ———— Voluntary abandonment of permanent tenure—*Express relinquishment*

mount to an express relinquishment. If a man so abandon his holding for years, neither he, nor any one under him, can reclaim it. CHUNDERMONEE NYA BHOOSUN v. SUMBHOO CHUNDER CHUCKERBUTTY
[W. R., 1864, 270

SHOODAN KURMAKAR v. RAM CHURN PAL
[2 W. R., 137

421. ———— Non-payment of rent with loss of possession—Non-payment of rent, cou-

422. ———— Non-payment of rent for some years—*Claim to eject tenant put in by landlord after relinquishment*—In a suit for ejectment

423. ———— Desertion of land and house by tenant—*Right of landlord to take*

[1 Agra, 266

BUNNOO BEBEE v. SHEO BUNS KANDO
[3 Agra, Rev., 9

424. ———— Land left vacant by ten-

LANDLORD AND TENANT—*continued.*

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*continued.*

425. ———— Desertion by one of two tenants—*Relinquishment by the other—Lease by landlord—Right of deserter to claim land subse-*

claimed to have purchased the right of the proprietor who had relinquished, sued to eject the defendant on the ground that the relinquishment was not valid.

426. ———— Condition for liability for rent until express surrender—*Lessor and lessee—Kabuliat—Suit for rent—Notice of surrender—Surrender of land by tenant.*—The plaintiff was a mortgagee of certain land, and sued the defendant for the rent thereof for the three years 1871,

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rejected it, holding that the plaintiff had failed to prove that the defendant had occupied the land

claim for rent, that he (defendant) had terminated

LANDLORD AND TENANT—*continued.*

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*continued.*

427. ———— Omission to make express surrender—*Notice of surrender of land by tenant—Splitting up of the cause of action—Son's liability on the father's contract of tenancy.*—On the 22nd

In 1877 the plaintiff sued the defendant *B* as heir of *S* for three years' rent from 1871-72 to 1873-74. The defendant answered that he had had no possession or occupation of the land since the death of his father in 1870. It was decided in that suit that the defendant had occupied the land up to 1874, and a decree was made against him for the rent claimed. In July 1878 the plaintiff brought the present suit for rent for the subsequent three years, *viz*, from 1875-76 to 1877-78 The defendant answered that he had given up the land in 1871-72. He did not assert, either in the former or in the present suit, that he had given notice to the plaintiff of his intention to terminate his tenancy by surrendering the land to the defendant, nor did he allege that the plaintiff had assented to a surrender of it by

under the kabuliat, but that he was not bound to

liability under that contract he was bound to give a six months' notice of surrender to the plaintiff. The mere denial by the defendant in the former and present suit, that he had ever occupied the land, could

the year 1875-76 depended upon whether he might have included it in the former suit. The High Court reversed the decrees of the Courts below, and made a decree for the plaintiff for the rent for 1876-77 and 1877-78. *Venkatesh Narayan Pai v. Krishnaji Arjun, I. L. R., 8 Bom., 160,* referred to and followed. BALAJI SITARAM NAIK SALGAVKAR *v.* BHIKAJI SOYARE PRABHU KANOLKAR

[I. L. R., 8 Bom., 164

LANDLORD AND TENANT—*continued.*

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*continued.*

428. —
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to void the lease. MOHIMA CHUNDER SEIN *v.* PETAMBUR SHAHA . . . 9 W. R., 147

arrangements with any others he pleases BYKUNT NATH DOSS *v.* BISSONATH MAJHEE 9 W. R., 268

430. ——— Relinquishment, Effect of—*Liability for rent.*—The mere fact of a tenant relin-

431. ——— *Liability for rent*—Where land relinquished by the original tenant is settled by the zamindar with other raiyats, the former raiyat cannot be held liable for rent, even though his relinquishment was not accompanied by notice given in writing MAHOMED GHASEE *v* SHUNKER LALL . . 11 W. R., 53

432. ——— *Relinquishment by tenant having a right of occupancy.*—Ordinarily tenants having a right of occupancy may, on the expiry of any agricultural year, relinquish their holdings by giving the landlord due notice; and the determination of the tenure of the tenant, whether by forfeiture or relinquishment, will put an end to the tenure of the shikmi holding under the tenant. The relinquishment of the holding will ordinarily put an end to the sub-tenures, provided such relinquishment be accepted by the landlord in good faith. Where the landlord procures the relinquishment of the holding to defeat the under-leases, he should be held bound by such under-leases, although custom may not authorize the tenant to grant leases to enure beyond the duration of his own interest. HOOLASEE RAM *v.* PURSOTUM LAL

[3 N. W., 63: Agra, F. B., Ed. 1874, 250

433. ——— *Surrender to landlord, Effect of, on under-tenant.*—When a tenant who holds land for a term with consent of the landlord underlets that land, he parts with his own interest therein to the extent of the interest created by the under-lease, and cannot therefore determine the interest of his under-tenant by surrendering his own term to the landlord HEERAMONEE *v.* GUNGANARAIN ROY . . . . 10 W. R., 384

434. ——— *Surrender to landlord, Effect of, on under-tenant.*—Where a lessor gives his lessee power to sublet, and the latter sublets, the sub-lessee obtains rights against both of which he cannot be deprived without his own consent. The lessee's surrender of his lease cannot operate to the prejudice of the sub-lessee. NEHALOONISSA *v.* DHUNNOO LALL CHOWDRY . 13 W. R., 281

435. ——— *Mokurari tenure—Relinquishment of mokuraridar.*—When a mokuraridar resigns his tenure, the dar-mokuraris created by him come to an end, but the position of raiyats holding rights of occupancy is not affected by the extinction of either the tenure or the under-tenures. KOYLASH CHUNDER BISWAS *v.* BISSESUREE DOSSEE . . . . . 10 W. R., 408

436. ——— *Bengal Tenancy Act (VIII of 1885), ss. 44, 85, 86, cls. (5) and (6)—Surrender by a raiyat—Ejectment of an under-raiyat—Notice to quit if necessary*—Where a raiyat surrenders his holding, the landlord is entitled to re-enter by ejecting the under-raiyat if he is not protected by s 85 or 86, cl (6) In such a case no notice to quit is necessary. NILKANTA CHAKI *v.* GHATOO SHEIKH . . . 4 C. W. N., 667

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438. ——— *Mirasidar.*—A mirasidar does not lose his mirasi rights by relinquishing his pottah. SUBBARAYA MUDALI *v.* COLLECTOR OF CHINGLEPUT . I. L. R., 6 Mad., 303

439. ——— Inability to surrender.

redemption But till the mortgage has been redeemed, the mortgagee is entitled to retain possession. SHEOUMBUR RAI *v.* SHEOBHUNG RAI

[1 N. W., 45: Ed. 1873, 41

440 ——— *Holder of survey field—Consent of heirs*—There is no precedent

441. ——— *Patnidar—Refusal to pay rent.*—It is not open to a patnidar of his own choice to throw up the patni, and by so

442. ——— *Dar-mirasi mokurari tenure—Notice of relinquishment—Surrender of lease.*—A tenure under a dar-mirasi

LANDLORD AND TENANT—*continued.*

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*continued.*

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[I. L. R., ...]

443. ———— Ex-proprietary tenant—*Relinquishment of ex-proprietary rights—Act XII of 1881 (N.-W. P. Rent Act), ss. 9, 31.—Held* by the Full Bench that an ex-proprietary tenant is not competent to relinquish his holding to his landlord by private arrangement. *Per* PETHERAM, C.J.—S 31 of the N.-W. P. Rent Act (XII of 1881) was enacted absolutely in the interests of the cultivator, and provides in effect that, although the occupancy tenant may not be turned out, and may not transfer his rights, he is not to be regarded as bound to his holding, that he may relinquish it, and that, in that case, he is not liable for rent; but this provision must not be taken advantage of by letting the zamindar buy the holding, and thus introducing a new cultivator, contrary to the prohibition contained in s. 9. INDAR SEN *v.* NAUBAT SINGH

[I. L. R., 7 All., 847

444. ———— *N.-W. P. Rent Act (XII of 1881), ss. 9, 31—Relinquishment of ex-*

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[I. L. R., 13 All., 396

445. ———— Surrender by abandonment—*Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 12.*—In a suit to recover possession of certain land comprised in an unexpired lease granted to the plaintiff by the first defendant it was pleaded that the plaintiff had left the land waste, and had refused to pay rent or give a written relin-

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446. ———— Mulgeni holding—*Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 12—Right of tenant to relinquish his lease.*—It is not competent to a mulgeni tenant in South Canara to relinquish his lease and free himself from his obligation for rent without the consent of the landlord. KRISHNA *v.* LAKSHMINARANAYYA

[I. L. R., 15 Mad., 67

447. ———— Surrender of lease—*Perpetual lease.*—The kamavan of a Malabar kovilagom executed a kuikanom lease of certain land, the jenm of the kovilagom, in 1848, and in 1861 his successor demised the same land to the same tenant in perpetuity. The present kamavan sued in 1889 to recover possession of the land. *Held* that the perpetual lease as being of an improvident character was ultra vires and void; and that the original lease was not surrendered by the acceptance of the present lease. RAMUNNI *v.* KERALA VARMA VALIA RAJA

[I. L. R., 15 Mad., 166

448. ———— Tenant remaining in occupation after passing a rajinama—*Bombay Land Revenue Act V of 1879, s. 74—Effect of the rajinama—Construction—Practice—Ejectment suit by owner of "inter case terminus."* The first and second defendants were sub-tenants of the third defendant, who had certain land which was part of the inam village of *D.* In 1881, the third defendant

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[I. L. R., 13 Bom., 294

449. ———— Relinquishment of possession—*Proof of reconveyance—Receipt of consideration.*—The mokuraridar having granted a dar-mokurari lease of part of his holding, which was afterwards surrendered for good consideration, ikrarnamas to this effect were executed, but not being registered were not receivable in evidence. *Held* that to prove a formal deed of reconveyance was not necessary, the receipt of the money and the relinquishment of possession sufficiently showing what had become of the dar-mokurari interest. IMAMBANDI BEGUM *v.* KAMLESWARI PERSHAD

[I. L. R., 14 Calc., 109
L. R., 13 I. A., 160

450. ———— Sufficiency of notice of relinquishment of land by tenant—*Inamdar—Land Revenue Code (Bom. Act V of 1879), s. 74—Remedy of landlord when vacant possession not given—Damages.*—On the 20th March 1893, the defendants, who held seven fields as tenants of the plaintiff, the inamdar of the village of Kaneri, gave him notice of relinquishment of six of them. The

LANDLORD AND TENANT—*continued.*

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*continued.*

428. —— Relinquishment by some

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PETAMBUR SHAHA . . . 6 W. R., 14

dar's serishta, not as for himself only, but as manager for the family, his relinquishment of the jote is not sufficient in law to authorize the zamindar to make arrangements with any others he pleases BYKUNT NATH DOSS v BISSONATH MAJHEE 9 W. R., 288

CHUNDEE LALL PANDEY . . 7 W. R., 250

431. —————— *Liability for rent* —Where land relinquished by the original tenant is settled by the zamindar with other raiyats, the former raiyat cannot be held liable for rent, even though his relinquishment was not accompanied by notice given in writing MAHOMED GHASEE v SHUNKER LALL . . . 11 W. R., 53

432. —————— *Relinquishment*

the tenure of the shikmi holding under the tenant. The relinquishment of the holding will ordinarily put an end to the sub-tenures, provided such relinquishment be accepted by the landlord in good faith. Where the landlord procures the relinquishment of the holding to defeat the under-leases, he should be held bound by such under-leases, although custom may not authorize the tenant to grant leases to enure beyond the duration of his own interest. HOOLASEE RAM v. PURSOTUM LAL

[3 N. W., 63: Agra, F. B., Ed. 1874, 250

433. —————— *Surrender to landlord, Effect of, on under-tenant.*—When a tenant who holds land for a term with consent of the landlord underlets that land, he parts with his own interest therein to the extent of the interest created by the under-lease, and cannot therefore determine the interest of his under-tenant by surrendering his own term to the landlord HEERAMONEE v. GUNGANARAIN ROY . . . . 10 W. R., 384

434. —————— *Surrender to landlord, Effect of, on under-tenant.*—Where a lessor gives his lessee power to sublet, and the latter sublets, the sub-lessee obtains rights against both of which he cannot be deprived without his own consent. The lessee's surrender of his lease cannot operate to the prejudice of the sub-lessee. NEHALOONISSA v. DHUNNOO LALL CHOWDRY . 13 W. R., 281

435. —————— *Mokurari tenure—Relinquishment of mokuraridar.*—When a mokuraridar resigns his tenure, the dar-mokuraris created by him come to an end, but the position of raiyats holding rights of occupancy is not affected by the extinction of either the tenure or the under-tenures. KOYLASH CHUNDER BISWAS v. BISSESUREE DOSSEE . . . . . 10 W. R., 408

436. —————— *Bengal Tenancy Act (VIII of 1885), ss. 44, 85, 86, cls. (5) and (6)—Surrender by a raiyat—Ejectment of an under-raiyat—Notice to quit if necessary*—Where a raiyat surrenders his holding, the landlord is entitled to re-enter by ejecting the under-raiyat if he is not protected by s. 85 or 86, cl (6). In such a case no notice to quit is necessary. NILKANTA CHAKI v. GHATOO SHEIKH . . . 4 C. W. N., 667

437. —————— *Relinquishment of purchaser from whom tenant holds.*—The rights of a tenant cannot be destroyed by the relinquishment of rights by the purchaser from a pattidar

438. —————— *Mirasidar* —A mirasidar does not lose his mirasi rights by relinquishing his pottah. SUBBARAYA MUDALI v. COLLECTOR OF CHINGLEPUT . I. L. R., 6 Mad., 303

439. —————— Inability to surrender landlord—*Mortgage with landlord's consent.*—A tenant who, with the implied consent of his landlord, has mortgaged his holding, cannot resign it to the landlord He may resign to him the equity of

440 —————— *Holder of survey field—Consent of heirs* —There is no precedent for ruling that the holder of a survey field is incompetent to resign it without the consent of his heirs DAVALATA BIN BHUJANGA v. BERU BIN YADOJI [4 Bom, A. C., 197

441. —————— *Patnidar—Re-*

442. —————— *Dar-mirasi mokurari tenure — Notice of relinquishment — Surrender of lease.*—A tenure under a dar-mirasi

LANDLORD AND TENANT—*continued.*

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*continued.*

mokurrari lease of land, which is not let for agricultural purposes, cannot be put an end to by a mere relinquishment on the part of the lessee, although after notice to the landlord. *Per* FIELD, J.—The

the soil, except those held on farming leases. JUDOONATH GHOSE *v.* SCHOENE, KILBURN & Co.

[I. L. R., 9 Calc., 971 : 12 C. L. R., 343

443. — — Ex-proprietary tenant—*Relinquishment of ex-proprietary rights—Act XII of 1881 (N.-W. P. Rent Act), ss. 9, 31.—Held* by the Full Bench that an ex-proprietary tenant is not competent to relinquish his holding to his landlord by private arrangement. *Per* PETHERAM, C J.—S. 31 of the N.-W. P. Rent Act (XII of 1881) was enacted absolutely in the interests of the cultivator, and provides in effect that, although the occupancy tenant may not be turned out, and may not transfer his rights, he is not to be regarded as bound to his

INDAR SEN *v.* NAUBAT SINGH

[I. L. R., 7 All., 847

444. ——— ——— *N.-W. P. Rent*

445. ——— Surrender by abandonment—*Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 12.*—In a suit to recover possession of certain land comprised in an unexpired lease granted to the plaintiff by the first defendant it was pleaded that the plaintiff had left the land waste,

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446. ——— Mulgeni holding—*Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 12—Right of tenant to relinquish his lease.* —It is not competent to a mulgeni tenant in South Canara to relinquish his lease and free himself from

LANDLORD AND TENANT—*continued.*

landlord. KRISHNA *v.* LAKSHMINARAYANAYYA

[I. L. R., 15 Mad., 67

447. ——— Surrender of lease—*Perpetual lease.*—The karnavan of a Malabar kovilagom executed a kaikanom lease of certain land, the jenm of the kovilagom, in 1846, and in 1861

rendered by the acceptance of the subsequent lease. RAMUNNI *v.* KERALA VARMA VALIA RAJA

[I. L. R., 15 Mad., 100

448. ——— Tenant remaining in occupation after passing a rajinama—*Bombay Land Revenue Act V of 1879, s. 74—Effect of the rajinama — Construction — Practice — Ejectment suit by owner of "inter esse termini."*—The first and second defendants were sub-tenants of the third

but the land belongs to the inamdar. I have no title over it, and the inamdar can give it for cultivation to any one he pleases." Shortly after the date of this rajinama, the inamdar gave the land to the plaintiff, who now sued to obtain it from the defendants, who had remained in possession. *Held* that the plaintiff was entitled to the land. The rajinama operated as a relinquishment of the tenancy by defendant No. 3 under s. 74 of Bombay Act V of 1879. *Held* also that the plaintiff was entitled to sue in ejectment, although he had not been put in possession of the land. BHUTIA DHONDU *v.* AMBO . I. L. R., 13 Bom., 294

449. ——— Relinquishment of possession—*Proof of reconveyance—Receipt of consideration.*—The mokuraridar having granted a dar-mokurari lease of part of his holding, which was afterwards surrendered for good consideration, ikrarnamas to this effect were executed, but not being registered were not receivable in evidence. *Held* that to prove a formal deed of reconveyance was not necessary, the receipt of the money and the relinquishment of possession sufficiently showing what had become of the dar-mokurari interest. IMAMBANDI BEGUM *v.* KAMLESWARI PERSHAD

[I. L. R., 14 Calc., 109
L. R., 13 I. A., 160

450. ——— Sufficiency of notice of

LANDLORD AND TENANT—*continued.*

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*continued.*

428. — of lessees given to ma of interest some of the to void the PETAMBUR SHAHA . . . 9 W. R., 147

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432. ——— *Relinquishment by tenant having a right of occupancy.*—Ordinarily tenants having a right of occupancy may, on the expiry of any agricultural year, relinquish their holdings by giving the landlord due notice; and the determination of the tenure of the tenant, whether by forfeiture or relinquishment, will put an end to the tenure of the shikmi holding under the tenant. The relinquishment of the holding will ordinarily put an end to the sub-tenures, provided such relinquishment be accepted by the landlord in good faith. Where the landlord procures the relinquishment of the holding to defeat the under-leases, he should be held bound by such under-leases, although custom may not authorize the tenant to grant leases to enure beyond the duration of his own interest. HOOLASEE RAM *v.* PURSOTUM LAL

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439. ——— Inability to surrender landlord—*Mortgage with landlord's consent.*—A

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[I. L. R., 7 All., 847

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L. R., 13 I. A., 160

450. ———— Sufficiency of notice of relinquishment of land by tenant—*Inamdar—Land Revenue Code (Bom. Act V of 1879), s. 74—Remedy of landlord when vacant possession not given—Damages.*—On the 20th March 1893, the defendants, who held seven fields as tenants of the plaintiff, the inamdar of the village of Kaneri, gave him notice of relinquishment of six of them. The

LANDLORD AND TENANT—*continued.*

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*continued.*

notice stated that these six fields were no longer in their possession, and that they would not be responsible for the assessment. The plaintiff notwithstanding brought this suit to recover assessment for the year 1893-94. The Subordinate Judge held that the defendants continued to be tenants of the fields in question and were liable to the assessment on the ground that the notice of relinquishment did not purport to give vacant possession to the plaintiff He thereupon passed a decree for the plaintiff. On appeal the District Judge reversed the decree, hold-

Code (Bombay Act V of 1879) only declares the customary common law on the subject of relinquishment of tenancy. A notice of relinquishment is not invalid because it does not purport to give and does not in fact give vacant possession to the inamdar. The result is the same, whether the fact that the possession is not vacant appears on the face of the notice or is shown otherwise. A tenant giving up demised land to his landlord is bound to give him vacant possession The result, however, of his not doing so is

he is put to in recovering possession of the land. BALIARAMAIRI RAMCHANDRAGIRI *v.* VASUDEV MORESHVAR NIPHADKAR I. L. R., 22 Bom., 348

451.———— Construction of a contract in a pottah allowing relinquishment of the land leased, in whole or in part.—A pottah granted a permanent mokurari lease for mining purposes, and gave to the tenant the privilege of surrendering either the whole or part of the land included in the lease, with a deduction to be made in the rent for the extent of the land that might be found on measurement to have been surrendered.

cottahs 9 gundas, whereof possession was surrendered with the exception of two plots, one of 24 and the other of 9 bighas. *Held* that, according to the true construction of the contract, there was

surrendered a part, the future rent was to be ascertained by the measurement of the area relinquished. To have made a new surrender would have been within the competency of the tenant. But for the tenant to continue to hold possession of part of the area which he had purported to relinquish was not open to him, or consistent with the validity of the surrender, the contract not admitting of approximate equivalents in regard to the possession of the total area professed to be surrendered, but not surrendered. Therefore the surrender upon which rested the defence to a suit by the lessor for the full rent was invalid in law. RAMCHURN SINGH *v.* RANIGANJ COAL ASSOCIATION . . . I. L. R., 26 Calc., 29
[L. R., 25 I. A., 210
2 C. W. N., 697

452.———— Abandonment of holding. —*Bengal Tenancy Act (VIII of 1885), s. 87*—

tenancy had terminated. LAL MAMUD MANDAL *v.* ABDULLAH SHEIKH . . . 1 C. W. N., 198

453.———————— *Bengal Tenancy Act (VIII of 1885), s. 87—Transfer of*

under s 87 of the Bengal Tenancy Act to the old tenant was not necessary. BHAGABAN CHANDRA MISSRI *v.* BISSESSWARI DEBYA CHOWDHURANI
[3 C. W. N., 46

LANDLORD AND TENANT—*continued.*

23. EJECTMENT.

(a) GENERALLY.

See CASES UNDER EJECTMENT, SUIT FOR.

455. ———— Interference with tenant by zamindar—*Inducing sub-tenants to pay rent*

KISSEN NUNDEE . . . . 14 W. R., 58

See RADHA MADHUB PANDA *v.* JUGGERNATH DOOAH . . . . 14 W. R., 183

456. ———— Right of landlord to eject and re-enter—*Expiration of lease and omission to take renewal.*—Where an old lease has expired, and the lessee, having the option of renewal on applying within a specified time, does not choose to take a new lease, the landlord's claim to re-entering cannot be styled a penalty in the sense in which forfeiture of a lease would be upon non-performance of a contract. DEB POOREE BOISTOBEE *v.* KENOO SINGH ROY . . . . . . 20 W. R., 357

457. ———— Right of lessee of zamindari rights to eject.—Unless evidence to the contrary be forthcoming, a lessee of zamindari rights must in this country be presumed to have all and the same powers in relation to the location or ejectment of raiyats as are possessed by the zamindar. SUDA NUND *v.* DWARKA SINGH . 2 N. W., 194

458. ———— Right of joint lessor—*Suit for ejectment.*—One of several joint lessors can eject a lessee after expiry of the lease. MUDUN SINGH *v.* NURPUT SINGH . . 2 W. R., 291

459 ———— Right of purchaser—*Patni talukh—Sale for arrears of rent—"Optimus interpres rerum usus"*—The plaintiff, purchaser of a talukh, sold for arrears of rent under Regulation VIII of 1819, brought a suit for khas possession of a tank within the talukh purchased by him, which had been held by the defendant and her predecessors from a time anterior to the grant of the talukh. *Held*

the terms of the holding or the amount of rent paid, and that one of the transferees of the tank had been the owner of the talukh in which it was, it was held that the plaintiff was not entitled to a decree for khas possession. NIDHIKRISHNA BOSE *v.* NISTARINI DASI [13 B. L. R., 416: 21 W. R., 386

LANDLORD AND TENANT—*continued.*

23. EJECTMENT—*continued.*

the rent. THAKOOR DOSS ROY *v.* BHYRUB CHUNDER BHUTTACHARJEE . . . 11 W. R., 509

461. ———— Liability to ejectment—*Long tenancy, Nature of*—Where the defendant had been in possession as tenant for more than thirty

462. ———— Inamdar—*Perpetual right of occupancy—Suit for ejectment.*—Where a family of kulkarnis in the Konkan was proved to have been in actual occupation of land under an inamdar for ninety years at a uniform rent, —*Held,* in the absence of proof of any lease for a

463. ———— Tenants of

rates fixed by the Government survey HARI BIN JOTI *v.* NARAYAN ACHARRYA 6 Bom., A. C., 23

464. ———— Position of *sub-lessee under unexpired lease.*—The fact that a person holds under an unexpired lease granted by a

465. ———— Status of

466. ———— Lessees from *lakhirajdar—Right of zamindar to eject.*—A party in legal possession under a lease from a lakhirajdar cannot be summarily evicted by the zamindar without the intervention of the Court, even if the zamindar is entitled to resume the land as invalid lakhiraj, or as lands which have lapsed on non-performance of stipulated service. INDRABUTTY KOONWAREE *v.* HOLLOWAY . . . . 9 W. R., 168

LANDLORD AND TENANT—*continued.*

23. EJECTMENT—*continued.*

467. ———— Illegal ejectment—*Right*

which the plaintiffs claimed had not, though not found to be permanent, been put an end to. *Held* that the plaintiffs were entitled to succeed. CHUNDAR KUMAR GUHA *v.* MUNGUL MOLLAH

[11 C. L. R., 387

468. ———— *Suit by tenant for possession*—A tenant, suing to recover possession of an old jote from which he has been dispossessed by his landlord before the termination of his tenancy, is not required to prove a right of occupancy. CROWDY *v.* JHUKREE DHANOOK

[23 W. R., 387

469. ———— *Act X of 1859, s. 25*—An ejectment by a zamindar without application made to the Collector under s. 25, Act X of 1859, is not necessarily an illegal ejectment. The illegality of the ejectment must be established by evidence. SHEO RUTTUN SINGH *v.* PHOOL KOOMAREE . . W. R., 1864, Act X, 68

470. ———— *Act X of 1859, s. 23, cl 6, and s. 25—Limitation Act, 1859, s. 15—Suit for possession by raiyat.*—When a zamindar, of his own authority, and without the intervention of the Collector under s. 25, Act X of 1859, ejects a tenant whose lease has expired, the tenant may recover possession, without reference to the title of the zamindar to eject him, in a suit under s. 15, Act XIV of 1859, but if the tenant sue under cl. 6, s 23, Act X of 1859, the question is open as to whether the tenancy was at an end or not; and if it was at an end, the tenant must fail in his suit. JONARDUN ACHARJEE *v.* HARADUN ACHARJEE

[B. L. R., Sup. Vol., 1020: 9 W. R., 513

URJOON DUTT BONICK *v.* RAM NATH KURMOKAR . . . . . . 21 W. R., 123

471. ———— *Restoration to*

GHOSE . . . . . 22 W. R., 487

LUTTEEFUNNISSA BIBEE *v.* POOLIN BEHAREE SEIN . . . . . W. R., F. B., 91

472. ———— *Liability to damages for ejectment.*—In a suit by an ejected lessee to recover a year's balance of rent from his les-

473. ———— Effect of order of ejectment—*Bengal Rent Act, 1869, s. 53—Right to standing crops on land.*—The effect of an order of ejectment under s. 53 of the Rent Act is to dispossess the raiyats, not only of the land, but also of the crop standing thereon, the object of such an ejectment being to terminate completely the connection between the parties as landlord and tenant. IN THE MATTER OF DURJAN MAHTON *v.* WAJID HOSSEIN

[I. L. R., 5 Calc., 135

474. ———— *Suit for arrears of rent—Bengal Rent Act (Beng. Act VIII of 1869), ss. 22, 52.*—A landlord who sues for arrears

determination of the tenancy thereupon takes place, but if the landlord sues for subsequent arrears, he treats the defendant as his tenant, and the right acquired under that section must be taken to have been waived. JOGESHURI CHOWDHRAIN *v.* MAHOMED EBRAHIM . . I. L. R., 14 Calc., 33

475. ———— *Agreement by*

should have no claim to retain possession of the cultivatory holding, but that he should give it up. Plaintiffs sued for ejectment of the defendant on the basis of the agreement, and obtained a decree from the lower Appellate Court. On second appeal by the defendant,—*Held* that, inasmuch as the plaintiffs sought to enforce the covenant contained in the kabuliat *in such a manner as to extinguish the rights* of occupancy found upon the facts of the case to have been acquired by the defendant in the land in suit, such suit must fail, as opposed to the policy of the law as shown in the provisions of s. 9 of the Rent Act (Act XII of 1881). Such a tenant may be ousted from his holding by enforcement of the

476. ———— *Evidence Act (I of 1872), s 116—Estoppel—Kumaki land—Unassessed waste reclaimed by plaintiff—Pottah granted to defendant.*—The plaintiff, who was the holder of a warg in Canara, demised adjacent waste land to one who brought it into cultivation and remained in occupation for two years. The land was not assessed to revenue in the name of either of these persons. At the end of two years the tenant let into occupation a sub-tenant, who subsequently assigned his right to the defendant, the holder of a neighbouring warg.

LANDLORD AND TENANT—*continued.*

23. EJECTMENT—*continued.*

The defendant obtained a pottah for the land from the Revenue authorities. In a suit by plaintiff to eject the defendant,—*Held* (1) that the defendant was not estopped from setting up a title adverse to the plaintiff, and that his possession became adverse when the pottah was granted to him; (2) that the plaintiff was not entitled to eject the defendant. SUBBARAYA *v.* KRISHNAPPA [I. L. R., 12 Mad., 422

477. ——— *Mirasi tenure —Suit by an inamdar to recover possession from a trespasser, claiming to have redeemed a mortgage made by mirasidar—Possession not adverse.*—An inamdar sued to eject the defendants from certain lands, alleging them to be trespassers. The Courts found that the lands were mirasi lands, and that one *G* was mirasidar. The defendants had redeemed a

not they had any rights as against the mortgagee. VINAYAK JANARDAN *v.* MAINAI [I. L. R., 19 Bom., 138

(*b*) NOTICE TO QUIT.

478. ——— Necessity of notice—*Mode of determination of tenancy.*—Notice to quit is a necessary part of the landlord's title to eject the tenant. ABDULLA RAWUTAN *v.* PAKKERI MOHOMED RAWUTAN . . I. L. R., 2 Mad., 346

479. ——— *Mode of determination of tenancy.*—In a suit by a lessee to oust the tenant in possession,—*Held* that the tenancy must be shown to have been legally determined by notice to quit, demand of possession, or otherwise. FITZPATRICK *v.* WALLACE [2 B. L. R., A. C., 317: 11 W. R., 231

NARAIN MUNDUL *v.* BHOOKTO MAHATO [25 W. R., 56

480. ——— *Surrender of*

[4 C. W. N., 667

481. ——— *Raiyat without*

482. ——— *Suit for eject-*

no such notice. RAJENDRONATH MOOKHOPADHYA *v.* BASSIDER RUHMAN KHONDKHAR [I. L. R., 2 Calc., 146: 25 W. R., 329

there is no express agreement, a tenant becomes a tenant-at-will, or from year to year, and is liable to be ejected upon a reasonable notice to quit, unless some local custom to the contrary is proved. PROSUNNO COOMAREE DEBEA *v.* RUTTON BEPARY [I. L. R., 3 Calc., 696: 1 C. L. R., 577

ABDOOL KUREEM *v.* OMER CHAND LAHATA [24 W. R., 461

TARUKPODO GHOSAL *v.* SHYAMA CHURN NAPIT [8 C. L. R., 50

484. ——— *Chota Nagpur*

URAO . . . 4 C. W. N., 792

485. ——— *Receipt of rent —Creation of tenancy.*—The recognition by the owner of lands of the interest of parties in possession by the receipt of rent from them constitutes a tenancy requiring to be determined by notice or otherwise before such parties can be treated as trespassers. SONET KOOER *v.* HIMMUT BAHADOOR [I. L. R., 1 Calc., 391: 25 W. R., 239 L. R., 3 I. A., 92

486. ——— *Lease at small rent—Endowed lands—Tenant-at-will.*—Lands

Regulation V of 1822, s. 8, refers only to zamindars and other proprietors of estates permanently settled under the Regulation of 1802. NALLATAMBI PATTAR *v.* CHINNADEYVANAYAGAM PILLAI . 1 Mad., 109

487. ——— *Suit for parti-*

acquired a permanent right of occupancy. *Semble*—

LANDLORD AND TENANT—*continued.*

23. EJECTMENT—*continued.*

DIAR . . . . I. L. R., 1 Mad., 333

488. ———————— *Mittadar, Right*

489. ———————— *Tenure transferable by custom.*—The mere fact that a tenure is transferable under the custom of the district does not make it one which is not terminable by the landlord on sufficient notice. SHAMA SUNDARI DABI *v.* NOBIN CHUNDER KOLYA . 6 C. L. R., 117

490. ———————— *Claims of rival tenants—Pottah by landlord to tenant out of possession.*—In a suit between two rival tenants having the same landlord, the one striving to obtain, and the other to maintain, possession of a particular parcel of land, where it is found that the defendant

a notice to quit. CHUNDER MONEE CHANDA *v.* BRINDABUN NATH . . . 25 W. R., 132

491. ———————— *Permanent tenancy pleaded.*—Suit to eject defendants from

their title as kattugudi tenants previous to the chalgeni demise, but it did not appear that they had re-asserted it up to date of suit. *Held* that the issue whether the plaintiff had given a notice to quit, reasonable and in accordance with local usage, should be tried *Baba v. Vishvanath Joshi, I. L. R., 8 Bom.*, 228, considered. SUBBA *v.* NAGAPPA . . I. L. R., 12 Mad., 353

492. ———————— *Notice under s. 84 of Bom. Act V of 1879—Plea of permanent tenancy, raised for the first time in defendants' written statement in ejectment suit—Denial of landlord's title—Objection of want of proper notice raised first in second appeal.*—The plaintiff sued to eject the defendants as tenants holding over after notice to quit. The notice required the defendants to vacate within eight days. The defendants pleaded that they were mirasi or permanent tenants. This plea was not proved. The Court of first instance passed a decree awarding immediate possession. The Appellate Court held that, although the notice to quit was not according to s. 84 of the Bombay Land Revenue Code (Bombay Act V of 1879), still as the suit was brought long after the expiry of the proper period, the plaintiff was entitled to recover possession "at the end of the present culti-

See also HAJI SAYYAD *v.* VENKTA [I. L. R., 15 Bom., 414 note

and RAM CHANDRA APPAJI ANGAL *v.* DAULATJI [I. L. R., 15 Bom., 415 note

493. ———————— *Plea of permanent tenancy—Decree, Forms of.*—The plaintiff sued to eject the defendants from certain land. The defendants pleaded that they were permanent

—*Held* that the District Judge could not, in his judgment, give the notice which the plaintiff was bound to give to his tenants. Plaintiff's suit must fail for want of notice. ABU BAKAR SAIBA *v.* VENKATRAMANA VISHVESHVAR . I. L. R., 18 Bom., 107

494. ———————— *Plea of permanent tenancy—Denial of title—Forfeiture—Waiver*

plaintiff possession of certain lands, which were in possession of the tenants (defendants Nos. 12 to 18). The jaghirdars pleaded that they were unable to give possession, as the tenants (defendants Nos 12 to 18) were permanent tenants and refused to quit the land. The tenants (defendants Nos. 12 to 18) put in a separate defence, also alleging that they were permanent tenants of the jaghirdars. The lower Appellate Court held that the tenants (defendants Nos. 12 to 18) were yearly tenants and

LANDLORD AND TENANT—*continued.*

23. EJECTMENT—*continued.*

objection as to the necessity of notice to quit was one which might be taken in second appeal DODHU v. MADHAVRAO NARAYAN GADRE [I. L. R., 18 Bom., 110

495. ——————— *Transfer of Property Act (IV of 1882), s. 106—Denial of*

to the suit being brought, denied the plaintiff's title as landlord, and that there was any contract of tenancy between them. *Unhamma Devi* v. *Vaikunta Hegde, I. L. R., 17 Mad., 218,* and *Dodhu* v. *Madhavrao Narayan Gadre, I. L. R., 18 Bom., 110,* referred to HAIDRI BEGUM v. NATHU [I. L. R., 17 All., 45

496. ——————— *Disclaimer of title—Khoti Act (Bom. Act I of 1880), ss. 20, 21, 22—Decision of Survey officer as to nature of tenure*—Where a tenant under a plea of ownership has suc-

botkhat was prepared and signed. Shortly afterwards the plaintiffs took forcible possession of the lands. Thereupon the defendants filed a suit in the Mamlatdar's Court to recover possession, alleging that they were owners of the land, and that they had been

LANDLORD AND TENANT—*continued.*

23. EJECTMENT—*continued.*

that the claim was time-barred *Held* that defendants, having distinctly repudiated the landlord's title in the possessory suit, were not entitled to a notice to quit. MAHIPAT RANE v. LAKSHMAN [I. L. R., 24 Bom., 426

497. ——————— *Permanent tenancy—Tenancy from year to year—Ejectment.*—Where the plaintiff sued in ejectment, and the defendant set up a right as a permanent tenant,—*Held* that the setting up of this right was a repudiation of the landlord's title, and absolved him from the obligation which would have devolved on him of giving to the defendant a notice to quit if the defendant had set up a tenancy from year to year. BABA v. VISHVANATH JOSHI . I. L. R., 8 Bom., 228

498. ——————— *Tenant from year to year.*—When there is no custom of the country to the contrary, six months' notice to quit is proper notice This period must have elapsed before the plaint is filed, and the time occupied in the suit before decree cannot be counted. NANABHAI RUSTAMJI v. PESTANJI JAMSETJI 6 Bom., A. C., 31

499. ——————— *Tenant from year to year.*—A notice to quit, running only for ten days, is not a sufficiently reasonable notice on which a landlord can maintain a suit in ejectment against a tenant from year to year. RAM ROTTON MUNDUL v. NETTRO KALLY DOSSEE I. L. R., 4 Calc., 339

500. ——————— *Yearly tenant—Reasonable notice to quit—Disclaimer of landlord's*

Act came into operation, a tenant other than a monthly tenant, holding over on the terms of his lease, was entitled to reasonable—that is to say, in the case of lands and in the absence of usage or stipulation to the contrary, to six months'—notice to quit. Disclaimer of a landlord's title in the pleadings after suit brought does not of itself determine the tenancy and render notice to quit unnecessary. AMBABAI v. BHAU . . . I. L. R., 20 Bom., 759

501. ——————— *Tenant of agricultural land—Tenancy-at-will—Yearly tenancy—Rent not payable until the end of the year—Bombay Land Revenue Code (Bom. Act V of 1879), s. 84.*—Where, in the case of agricultural

that the contract between the parties took the case out of s 84 of the Land Revenue Code (Bombay Act

LANDLORD AND TENANT—*continued.*

23. EJECTMENT—*continued.*

possession in the middle of a year. BALKRISHNA VAMANAJI GAVANKAR *v.* JASHA FARSI SHIBEL [I. L. R., 19 Bom., 150

502. ———————— *Tenant-at-will —Reasonable notice to quit.*—In a suit for ejectment brought against a tenant who had no per-

cient, but gave the plaintiff a decree for possession on a certain date named in the decree. *Held,* following the case of *Hem Chunder Ghose* v. *Radha Pershad Paleet, 23 W. R., 440,* that the suit was itself a sufficient notice to quit, and that the decree made was correct. RAM LAL PATAK *v.* DINA NATH PATAK . I. L. R., 23 Calc., 200

503. ———————— *Effect of determinating tenancy on sub-tenants—Bombay Land Revenue Code (Bom. Act V of 1879), s. 84.*—A landlord putting an end, by proper notice, to the tenancy of his tenant, thereby determines the estate of the under-tenants of the latter. TIMMAPPA KUPPAYYA *v* RAMA VENKANNA NAIK [I. L. R., 21 Bom., 311

504. ———————— *Tenancy reserving an annual rent—What notice a raiyat holding an annual tenancy is entitled to.*—In a tenancy created by a kabuliat with an annual rent reserved, a tenant is entitled to six months' notice expiring at the end of the year of the tenancy before he can be ejected KISHORI MOHUN ROY CHOWDHRY *v.* NUND KUMAR GHOSAL [I. L. R., 24 Calc., 720

505. ———————— *Bengal Tenancy Act (VIII of 1885), s. 49—Suit for ejectment —Written lease—Holding over.*—A suit to eject an under-raiyat under s 49, cl. (*b*), of the Bengal Tenancy Act cannot be maintained without a notice to

DASS *v.* UMA KANT CHUCKERBUTTY [2 C. W. N., 238

506. ———————— *Monthly tenancy.*—By indenture, dated 1st February 1856,

in 1858 became the assignee of the lease without notice to *A*, and continued to occupy the premises and paid rent in the name of *B* up to August 1866. No renewal of the lease was applied for, and the plaintiffs, who became the representatives of *A* in June 1866, gave notice through their attorneys on 6th September 1866 to *B* to quit on 1st November 1866, and on that date demanded possession from *B* and from the defendant. *Held* that the tenancy after 31st October 1865 was a monthly tenancy in the name of *B,* and was terminated on the 31st October 1866 by the notice of 6th September 1866. BROJONATH MULLICK *v* WESKINS [2 Ind Jur., N. S., 163

507. ———————— *Tenant from year to year—Occupancy, Right of.*—If a tenant from year to year receive no notice determining the

occupancy. DARIAO BISHOON *v.* DOWLUTA [5 N. W., 9

508. ———————— *Limitation—Patni lease—Receipt of rent—Notice.*—*A,* a Hindu, died leaving his widow *B* and his mother *C. B* adopted *D. C* granted a patni pottah to *E* of

the patni lease and for obtaining khas possession of the property. *Held* that the suit was not barred.

lord and tenant was legally determined by a reasonable notice. *Semble*—Such notice should expire at the end of the year. BUNWARI LAL ROY *v.* MAHIMA CHANDRA KNUALL [4 B. L. R., Ap., 86: 13 W. R., 267

509. ———————— *Denial of title —Suit for possession by purchaser at sale in execution of decree.*—In a suit by the plaintiff, a purchaser at a sale in execution of a decree who had obtained possession through the Court, and been subsequently ejected, to recover the lands he purchased, it appeared that *R* and *G,* two of the

retain possession of the land, merely because the plaintiff had failed to prove that he had let the land to-

LANDLORD AND TENANT—*continued.*

23 EJECTMENT—*continued.*

them. They denied the plaintiff's title, and were not therefore entitled to any notice to quit. AGARCHAND GUMANCHAND v. RAKHMA HANMANT

[I. L. R., 12 Bom., 678

510. ——— *Notice of ejectment—Determination of tenancy—Act XII of 1881, ss. 36, 39 (c) 40—Suit for ejectment and mesne profits—Payment by wrong doer in possession not to be deducted from such profits.*—S. 39 (c) and s. 40 of the N.-W. P. Rent Act (XII of 1881) imply that if a land-holder has failed to give his tenant the written notice of ejectment required by s. 36, the tenancy is not to be treated in law as having ceased on determination of the term provided, but is to be treated as still subsisting Where upon the expiry of the term of a lease, but without the written notice of ejectment required by s. 36 of the Act having been given by the lessor, possession was taken and rents collected by persons claiming under a subsequent lease,—*Held* that the tenancy of the first lessees did not cease upon the determination of the term of their lease; and that the second lessees were wrong-[illegible]

[illegible]

511 [illegible]

into the possession of the ancestors of defendant No. 8, who were village blacksmiths, as kasavargam tenants Defendant No 8 had left the village and sold the land as if it were his ancestral property to others of the defendants, who were now in occupation. *Held* that the plaintiffs were entitled to recover the land without proof of notice to quit to the occupants. SUBBARAYA v. NATARAJA

[I. L. R., 14 Mad., 98

512 ——— *License to occupy*.—The plaintiffs, who were mirasidars of a village, permitted the defendants to occupy their land on the condition that they should do blacksmith's work for the plaintiffs. The defendants ceased to do the work after a time *Held* that the plaintiffs were entitled to evict the defendants without notice to quit. ATHAKUTTI v GOVINDA

[I. L. R., 16 Mad., 97

513. ——— *Plea of permanent tenancy.*—In a suit for possession of land, the plaintiffs claimed title under a lease from the shrotriemdars of the village where the land was situated. The defendants, who had obstructed the plaintiffs from taking possession of part of the land, claimed to have permanent occupancy-rights, and asserted that the shrotriemdars were entitled not to the land itself, but to melvaram only. To meet this allegation, the plaintiffs tendered in evidence documents executed by other tenants in the same village showing that they were purakudis merely. The defendants had received no notice to quit before suit. *Held* that the plaintiffs were entitled to eject [illegible]

514. ——— *Suit by tenant to recover possession claiming as full owner—Subsequent claim as yearly tenant unjustly dispossessed—Denial of landlord's title—Variance in statement between pleading and proof*—A plaintiff sued to recover possession of certain fields, etc., alleging that he was a permanent tenant of the defendant, having purchased the right of occupancy from previous occupants of the land The lower Court held that the plaintiff's vendors were mere yearly tenants and not permanent tenants, but that the sale of their right to the plaintiff was valid, and that the plaintiff had been wrongfully dispossessed by the defendant, no notice to quit having been given. But *held* that the plaintiff could not recover; for his plaint and the conduct of his case amounted to a denial of his landlord's (defendant's) title. In his suit the plaintiff claimed to be full owner, and he could not afterwards claim to be restored to possession on the ground that he was a yearly tenant entitled to notice to quit, which was not given. LALU GAGAL v BAI MOTAN BIBI

[I. L. R., 17 Bom., 631

515. ——— *Non-occupancy raiyat—Bengal Tenancy Act (VIII of 1885), ss. 44 and 45—Suit for ejectment by a lessor against another holding over after expiry of his lease.*—Certain land was let by the zamindar to the [illegible]

their lease expired, brought a suit to eject them. *Held* that the defendants could not be considered as trespassers, but that s 45 of the Bengal [illegible]

[I. L. R., 25 Calc., 75

516. ——— *Bengal Tenancy Act (VIII of 1885), s. 49—Ejectment of under-tenant not holding under written lease.* S. 9 of the Bengal Tenancy Act does not prescribe any period of notice, or that the suit for ejectment shall not be brought until the expiry of a certain term after the expiry of the period of notice. The effect of the section seems to be that the landlord can serve a notice to quit at any time in the course of the year, but that he shall not eject the tenant until the end of the year next following the year in which the notice to quit is served, that is to say, an under-raiyat must, under any circumstances, get a full year expiring at the

LANDLORD AND TENANT—*continued.*

23. EJECTMENT—*continued.*

end of the agricultural year, from the time when the notice is served. NAHARULLAH PATWARI *v* MADAN GAZI . . . . . 1 C. W. N., 133

517. ——— Sufficiency of notice— *Ejectment, Application for.*—A zamindar cannot

[illegible]

... N. W., 161

JADOONUNDUN SINGH *v.* FAUJDAR KHAN [5 N. W., Ap., 1

518. ——— *Unreasonable notice.*—A notice to quit within thirty days, served by a landlord on his tenant at a time when the crops are ripening, is unreasonable and insufficient. Where such a notice was given, the Court refused to determine what would have been a sufficient notice, and to make a decree to take effect at a future date on the

[illegible]

doubted. JUBRAJ ROY *v.* MACKENZIE [5 C. L. R., 231

519 ——— *Reasonable notice—Tenant other than occupancy-raiyat.*—A

[illegible]

CHUNDER ROY *v.* R[illegible] CHAND CHANGO [I. L. R., 9 Calc., 48 : 11 C. L. R., 143

520. ——— [illegible] *of notice.*—Th[illegible] that a notice t[illegible] raiyat must t[illegible] year or be a three months' notice. Such a raiyat is only entitled to a "reasonable" notice, and such as will enable him to reap his crop; what is a "reasonable" notice is a question of fact to be decided in each case, having regard to its particular circumstances, and the local customs as to reaping crops and letting land. RADHA GOBIND KOER *v.* RAKHAL DAS MUKHERJI . . I. L. R., 12 Calc., 82

521. ——— *Reasonable notice.*—It is not necessary that the period allowed in a notice to quit by a landlord to his tenant should terminate at the end of the year, but the notice must be in respect of the date of determination of the tenancy as well as in other respects a reasonable notice. A notice to quit served on the 20th of Pous, and allowing two months to the tenant to vacate his holding, such period thus expiring on the 20th Falgun, when it appeared that cultivation began in the months of Magh and Falgun, and that they were the months for letting out land in the district, held not to be a reasonable notice. BIDHUMUKHI DABEA CHOWDHRAIN *v.* KEFYUTULLAH [I. L. R., 12 Calc., 93

522 ——— *Korfa raiyats in Manbhum—Ejectment—Act X of 1859.*—There is no a[illegible] to a k[illegible] notice. [illegible] able [illegible] is a q[illegible] each case according to the particular circumstances

[illegible]

Das Mukherji, I. L. R., 12 Calc., 82; Bidhumukhi Dabea Chowdhrain v. *Kefyutullah, I. L. R., 12 Calc., 93;* and *Kali Kishen Tagore* v. *Golam Ali, I. L. R., 13 Calc., 3,* referred to and followed. DIGAMBAR MAHTO *v.* JHARI MAHTO [I. L. R., 23 Calc., 761

523. ——— *Determination of tenancy—Inamdars.*—An inam, existing under grant made in 1811, became in 1863 the subject of arrangement between the zamindar, who had succeeded the grantor in the zamindari, and the inamdars. This resulted in what was either a confirmation of the original grant on terms more favourable to the zamindar, or a new grant of an estate in all respects, save as to the rent, similar to the previously existing estate, which was a tenancy in perpetuity. To a suit brought by certain mortgagees against the inamdars

[illegible]

524 ——— *Notice ending with cultivating year—Inamdar—Partition.*—An inamdar cannot eject a yearly tenant without six months' notice to quit, ending with the cultivating year. Nor can he eject other tenants, except on the expiration of their term of years or other interest in the land. Where a family of inamdars disagree among themselves, and one of them obtains a decree for partition against the others, he cannot, in execution thereof, eject (without due notice to quit) the tenantry on such portion of the land as may have been allotted to him under that decree in a suit to which such tenantry were not parties, and by which therefore their rights are not barred. NARAYAN BHIVRAV *v.* KASHI . . . . I. L. R., 6 Bom., 67

LANDLORD AND TENANT—*continued.*

23. EJECTMENT—*continued.*

525 ——————— *Inamdar.*—Tenants cannot be ejected as mere trespassers. If they are yearly tenants, they are entitled to a clear six months' notice to quit before they can be evicted If they are tenants for a term of years or for a life or lives, there must be proof of an expiration of the term by effluxion of time or of the falling of the life or lives. PANDURANG SAKHARAM *v.* YEDNESHWAR [I.L. R., 6 Bom., 70

526. ——————— *Holding from year to year.*—Even in the case of a tenant from year to year, the landlord cannot evict without giving previous notice to quit To be reasonable, a notice must not be peremptory, but must fix a time within which the ryot is required to quit the land BETTS *v.* JAMIE SHAIKH . . 23 W.R., 271

See also MAHOMED RASID KHAN CHOWDHRY *v.* JADOO MIRDHA . . . 20 W. R , 401

527. ——————— *Transfer of Property Act (IV of 1882), ss 106, 111.*—On the 11th December 1882, *A*, who had, on the 1st July

letter. *Held* by OLDFIELD, *J.* (MAHMOOD, *J.*, dis-

of *Property Act*, and sufficient to determine the tenancy, inasmuch as it gave the tenant more than fifteen days' notice, and its terms were such that he could with perfect safety have acted upon it

a fixation of the shortest period of notice allowed by the section; and the term "expiring" means that the terms of the notice must be such as to make it capable of expiring according to law at the right time, so as to render it safe for the tenant to quit

Held, on appeal under the Letters Patent, that, with reference to the terms of s 106 of the Transfer of Property Act, the letter was not such a notice to quit as the law required, inasmuch as it was not a notice of the lessor's intention to terminate the contract at the end of a month of the tenancy. *Per* STRAIGHT, *J.*—*Quære*—Whether the letter was a notice to quit at all. Also *per* STRAIGHT, *J.*—A notice to quit must be certain, at all events in respect of the date of the determination of the tenancy: in other words, there must be a clear and explicit intimation to the tenant as to the date after which he will, if he remains in occupation of the premises, become a trespasser. *Ahearn* v. *Bellman, L. R., 4 Exch. D, 201,* distinguished The judgment of MAHMOOD, *J.*, reversed, and that of OLDFIELD, *J.*, affirmed. BRADLEY *v.* ATKINSON [I. L. R , 7 All., 899

528. ——————— *Ejectment by patnidar—Notice to quit, Verbal.*—A patnidar,

529. ——————— *Tenant without right of occupancy* —The "reasonable notice to quit" which a raiyat without a right of occupancy may claim from his landlord before he can be ejected, need not be confined to a demand of possession and notice to quit on a certain day. It is sufficient if the landlord asks for a higher rate of rent and gives the raiyat notice to quit if he declines to pay it. A suit for ejectment against a tenant-at-will is a sufficient demand of possession and would justify a decree containing a date fixed for ejectment. HEM CHUNDER GHOSE *v.* RADHA PERSHAD PALEET [23 W. R., 410

530. ——————— *Notice to quit or pay an enhanced rent—Two-fold claim, both for rent and ejectment, not sustainable—Decree for rent and ejectment—Beng. Act VIII of 1869, s. 14* —Where *A*, after notice to his tenants to pay rent at an enhanced rate from the commencement of the ensuing year or quit, brought a suit in which he prayed for a higher rate of rent or ejectment in the alternative,—*Held* that in such a suit the plaintiff could not insist upon a two-fold claim for both rent and ejectment, nor obtain a decree for rent for the first quarter and ejectment thereafter. It is doubtful whether a notice in the alternative form to pay enhanced rent from a certain day or quit is a good notice. *Jasoo Mundur* v. *Brijo Singh, 23 W. R.*

LANDLORD AND TENANT—*continued.*

23. EJECTMENT—*continued.*

519, doubted. MOHAMAYA GOOPTA v. NILMADHAB RAI . . . . I. L. R., 11 Calc., 533

531. ———— *Yearly tenancy —Notice to make a fresh agreement with the landlord or to quit at the end of the year.*—On the 28th September 1891, the plaintiff gave defendants, who held his land as annual tenants, a notice in the following terms: "Therefore, within two days from the receipt of this notice, meet us, increase the rent and give us a legal writing, or in default, on the 31st March 1892 we shall keep present two good men and take full possession of the said land with all [illegible]

terminate the tenancy. KIKABHAI GANDABHAI v. KALU GHELA . . I. L. R., 22 Bom., 241

532. ———— *Bengal Tenancy Act (VIII of 1885)—Suit for ejectment—Notice including some land of which the defendant is found to be not in possession.*—A notice to quit [illegible]

SHAMA CHURN MITTER v. WOOMA CHURN HALDAR I. L. R., 25 Calc., 36
2 C. W. N., 106

533. ———— *Tenancy created by a kabuliat—Six months' notice requiring the tenant to vacate the holding before the expiry of the last day of the year, whether good.*—In a tenancy created by a kabuliat with an annual rent reserved, a six months' notice to quit requiring the tenant to vacate the holding within, instead of on, the expiry of the last day of a year of the tenancy, is a good notice in law, inasmuch as there was no appreciable interval between the expiry of the notice and the end of a year of the tenancy. *Page v. More, 15 Q. B., 684,* distinguished. IMAIL KHAN MAHOMED v. JAIGUN BIBI

I. L. R., 27 Calc., 570
4 C. W. N., 210

534. ———— *Co-owners—Notice to quit by one co-owner—Notice to quit before expiry of term of lease—Suit in ejectment by one co-owner—Parties*—K and P were co-owners of certain property in Bombay, and by a writing, dated January 1883, they granted a lease of the whole of the said property to the defendant for a term of three years from the 1st March 1883 to the 28th February 1886, at a monthly rent of R705. Subsequently to the granting of the said lease, viz., on the 1st September 1883, P conveyed her equal [illegible]

this suit for possession and for occupation-rent from the 1st March 1886. The defendant pleaded that the notice to quit, being given by one of the co-owners only, was invalid, and further that the plaintiff was not entitled to sue alone. *Held* that the notice was a valid notice, and that the suit was maintainable by the plaintiff alone. The second clause of the lease was as follows: "If you mean me to vacate at the completion of the term, you must give one month's notice. In accordance therewith, I will vacate and give up [illegible] ice to quit was [illegible] of the lease, [illegible], the expiry of [illegible] v. CURSETJI [illegible] I. L. R., 11 Bom., 644

535. ———— *Transfer of Property Act (IV of 1882), s. 106—Notice to quit—"Expiring with the end of a month of tenancy"*—Where fifteen days' notice to quit was served upon a tenant on the 7th of Assin,—*Held*, the Court in determining the question of the validity of such a notice should find what in any given case is the "end of a month of the tenancy." If the end of a month of the tenancy in this case was the 23rd Assin 1293 (15 days from the 7th Assin), the notice would be a good one, otherwise not. *Bradley v. Atkinson, I. L. R., 7 All., 899,* referred to. SONA ULLAH v. TROYLUKHO NATH GORAIN

2 C. W. N., 383

536. ———— *Transfer of Property Act (IV of 1882), s. 106—Meaning of "fifteen days"—Notice.*—The fifteen days' notice to quit referred to in s. 106 of the Transfer of Property Act means notice of fifteen clear days. SUPODINI v. DURGA CHARAN LAW . I. L. R., 28 Calc., 118
4 C. W. N., 790

537. ———— Service of notice—*Proof of service—Publication in newspaper—Termination of tenancy—Adverse possession.*—Proof of service of a notice to quit on a tenant, which is confined to proving that such a notice, *addressed to the tenant,* was published in a local newspaper under circumstances which made it highly probable that the notice in question came to the knowledge of the tenant, is not, without more, such proof of service as will suffice to terminate the tenancy, or entitle the tenant to contend that he remained, after the date fixed by the notice for vacation in adverse possession of the premises. CHANDMAL v. BACHRAJ

I. L. R., 7 Bom., 474

538. ———— *Service of notice to quit by registered letter, Sufficiency of.*—Where a notice to quit was sent by a registered letter, the posting of which was proved, and which was produced in Court in the cover in which it was despatched, that cover containing the notice with an endorsement upon it purporting to be by an officer of the post office stating the refusal of the addressee to receive the letter,—*Held* that this was sufficient service of notice. *Lootf Ali Meah v. Peeree Mohun Roy, 16 W. R., 223,* and *Papillon v. Brunton, 5*

LANDLORD AND TENANT—*continued.*

23. EJECTMENT—*continued.*

H. & N., 519, referred to. JOGENDRO CHUNDER GHOSE *v.* DWARKA NATH KARMOKAR

[I. L. R., 15 Calc., 631

539. ———— *Necessity of proof of service.*—In answer to the plaintiff's suit in ejectment, the defendant denied the plaintiff's title and asserted his own. *Held* that assuming the defendant to be the plaintiff's tenant, yet, inasmuch as the defendant denied the plaintiff's title, it was not necessary for the plaintiff to prove service of notice to quit on the defendant. GOPALRAO GANESH *v.* KISHORE KALIDAS . . I. L. R., 9 Bom., 527

540. ———— *Mode of service of notice to quit upon under-raiyat, s. 49, Bengal Tenancy Act, and Rule 3 of Ch. I of the Rules framed by the Local Government—Service through Post office.*—A notice to quit under s. 49 of the Bengal Tenancy Act was sent by post in a registered cover, and it was found that the notice was delivered to the defendant. *Held* that the notice had not been properly served, the mode of service being as described in the Rules made by the Government under the Bengal Tenancy Act. TARA DAS MALAKAR *v.* RAM DOYAL MALAKAR

[2 C. W. N., 125

541. ———— *Suit for ejectment—Notice to quit by post—Bengal Tenancy Act (VIII of 1885), s. 189—Mode of service of the notice under the Act—Bengal Government Rule 3, Ch. I, under s. 189 of the Bengal Tenancy Act.*—The plaintiffs served a notice, by post, upon the defendant to quit certain khud kasht lands that were alleged to be in his wrongful possession, and subsequently instituted a suit to eject him from those lands. *Held* that the notice was bad in law, and the suit for ejectment based upon such a notice must fail. *Tara Das Malakar* v *Ram Doyal Malakar, 2 C. W. N., 125,* referred to. LALA MAKHAN LAL *v.* LALA KULDIP NARAIN

[I. L. R., 27 Calc., 774

542. ———— *Notice to quit—Transfer of Property Act (IV of 1882), s. 106.*—The plaintiff sued the defendant to recover possession of a certain house in Bombay and for arrears of rent. The defendant pleaded that the house in question was occupied by the Beni Israel school of Bombay which was maintained by the Anglo-Jewish Association of London, that he was honorary secretary of the school, and as such, and not in his per-

[illegible]

that the service was sufficient. BHOJABHAI *v.* HAYEM SAMUEL . . I. L. R., 22 Bom., 754

543. ———— *Bengal Tenancy Act (VIII of 1885), sch. III, art. 3, and Rule 3, Ch. I, of the Rules framed by the Local Government.* In a suit to eject the defendants' under-raiyats) from their holding, a plea was taken in the first Court that the notice to quit was not sufficient, inasmuch as it was not served through the Court. In second appeal the objection to the notice was based on the ground that it should have been served by proclamation and beat of drum under Rule 3 framed by the Local Government under the provisions of the Bengal Tenancy Act. *Held* that there was no rule requiring that the notice should be served through the Court. What is really required is that it should be served in the same manner as provided for in the Civil Procedure Code. That the objection to the notice taken here for the first time cannot be entertained in second appeal. LOKE NATH GOPE *v.* PITAMBAR GHOSE . 3 C. W. N., 215

544. ———— *Transfer of Property Act (IV of 1882), s. 106—Suit for ejectment—Service of notice upon one of several joint-tenants.* In a suit for ejectment under the Transfer of Property Act, a notice to quit which was addressed to all the joint tenants who lived in commensality was handed over to one of them, and he signed an acknowledgment of it. *Held* that the service was a good service. RAJONI BIBI *v.* HAFIZONNISSA BIBI

[4 C. W. N., 572

545. ———— *Transfer of* [illegible]

[illegible]

of Property Act. *Rajoni Bibi* v. *Hafizonnissa Bibi, 4 C. W. N., 572,* followed SUBADINI *v.* DURGA CHARAN LAW . I. L. R., 23 Calc., 118

[4 C. W. N., 790

24. BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS.

546. ———— **Removal of buildings by tenant** *—Tenant holding over after expiry of lease.*—By indenture, dated 1st February 1856, *A* leased certain premises in Calcutta to *B* for a term of ten years, as from 1st November 1855, at a rent of R100 per month [illegible]

[illegible]

under the lease. The defendant, on 24th August 1858, became, by various mesne assignments, the assignee of the lease, without notice to *A*, and subsequently repaired and erected buildings on the land.

LANDLORD AND TENANT—*continued.*

24. BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS—*continued.*

The defendant continued to occupy the premises, and paid the rent in the name of *B* up to August 1866. No renewal of the lease (which expired on 31st October 1865) was ever demanded by *B* or by any one

monthly tenancy in the name of *B*, and was termi-

547. ———— Removal of material of house by outgoing tenant—*Custom of Calcutta—Injunction.*—In an action of ejectment the defendant set up a claim by custom to remove the materials of a house erected by him on the premises in dispute; but the Court granted an injunction to restrain him from doing so, though giving him leave to bring a suit to establish the special custom: in default of such suit being brought, the injunction to be perpetual. DOYAL CHAND LAHA *v.* BHOYRUBNATH KHETTRY . . . . . . Cor., 117

548. ———— Huts, Right of tenant to—*Custom for outgoing tenant to remove huts—Acquiescence.*—On a case stating that the plaintiff

LANDLORD AND TENANT—*continued.*

24. BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS—*continued.*

549. ———— Removal of buildings on

the building is not taken down by the ... during the continuance of any estate which he may possess. IN THE MATTER OF THE PETITION OF THAKOOR CHUNDER PARAMANICK

[B. L. R., Sup. Vol., 595: 6 W. R., 228

This case contemplates the case of an admitted sale

Held not applicable to other than innocent purchasers. SOHUN SINGH *v.* KEOLA BIBEE

[16 W. R., 169

550. ———— Removal of buildings—

551. ———— Sale by tenant

contract. The contract is entire and single. If a portion of a tenure be sold either by the tenant or in execution of a decree of the Civil Court against the tenant in the absence of any consent by the zamindar, the only mode in which effect can be given to the

LANDLORD AND TENANT—*continued.*

24 BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS—*continued.*

who held a piece of land on a lease erected a brick house upon the land without the permission of, but without any objection by, his landlord. In execution of a decree of the Civil Court against the tenant in January 1865, the materials of the house and the site on which the house was build were sold separately to two individuals from whom the defendant purchased both. On the 31st July 1866 the tenure itself was sold for arrears of rent to one *N*, from whom the plaintiff purchased it. The plaintiff brought this suit to recover possession of the land free from all incumbrance by the removal of the house. The Court refused to give the plaintiff a decree for possession SHIBDAS BANDOPADHYA v BAMANDAS MUKHOPADHYA

[8 B L. R., 237: 15 W. R., 360

552. ———— *Additions to*

553. ———— *Erection of*

554. ———— *Contract Act, 1872, s. 1*—The law laid down by *In re Thakoor Chunder Paramanick, B L. R, Sup. Vol., 595,—viz.,*

NATH KURMOKAR

[I. L. R., 5 Calc., 688: 5 C. L. R., 492

555. ———— *Ownership in land and buildings—Suits between Hindu inhabitants of Calcutta—21 Geo. III, c. 70, s 17—Dif-*

dant admitted the plaintiff's claim to possession, but contended that he was entitled to be paid a fair price for the buildings, or to remove the materials. *Held* that he was neither entitled to compensation nor to remove the materials, and that the question

The case of *Thakoor Chunder Poramanick, B. L. R., Sup Vol, 595,* discussed. JUGGUT MOHINEE DOSSEE v. DWARKA NATH BYSACK

[I. L. R, 8 Calc., 582

556. ———— *Suit to eject tenant—Right to remove buildings or get value for them*—In a suit to eject defendants (who held under a lease) from a house-ground and to compel them to remove the buildings thereon erected, the defendants pleaded that the lease was a permanent lease, and that plaintiff had no right to eject. The lease expressly authorized the lessee to build. The Court of first instance, holding that it was not a permanent lease, decreed as sued for. The appellate Court,

557. ———— *Kasavargam tenant—Right to buildings Compensation on eviction.*—A kasavargam tenant has a proprietary right to his house on the land, and when evicted, he is entitled to compensation for his buildings BLAKE v. SAVUNDARATHAMMAL . I. L. R., 22 Mad., 116

558. ———— *Hindu law—Wells dug with consent of landlord.*—Where tenants from year to year, with permission of the landlord, sank wells in the land demised,—*Held* that they were not entitled under Hindu law to any compensation therefor from the landlord after the determination of the tenancy. VENKATAVARAGAPPA v. THIRUMALAI . . I. L. R., 10 Mad, 112

559. ———— *Malabar kanam—Change in character of land—Passive acquiescence of landlord—Estoppel—Compensation for improvements by tenant.*—Land was demised on kanam for wet cultivation. The demisee changed the character of the holding by making various improvements, which were held to be inconsistent with the purpose for which the land was demised. On a find-

LANDLORD AND TENANT—*continued.*

24. BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS—*continued.*

The defendant continued to occupy the premises, and paid the rent in the name of *B* up to August 1866. No renewal of the lease (which expired on 31st October 1865) was ever demanded by *B* or by any one

notice of the 6th of September, demanded possession of *B* and of the defendant who was in actual occupation

the defendant was not entitled to a renewal for three years; that the tenancy after 1st October 1865 was a monthly tenancy in the name of *B*, and was terminated on 31st October 1866 by the notice of 6th September 1866; that the defendant was not entitled to remove buildings erected; but that he might remove the machinery. BROJONATH MULLICK *v.* WESKINS [2 Ind. Jur., N. S., 163

547. ———— Removal of material of house by outgoing tenant—*Custom of Calcutta—Injunction.*—In an action of ejectment the defendant set up a claim by custom to remove the

KHETTRY . . . . . . Col., 111

548. ———— Huts, Right of tenant to—*Custom for outgoing tenant to remove huts—Acquiescence.*—On a case stating that the plaintiff became tenant to the defendant of certain land in Calcutta, and at their time of becoming such tenant

such tenants, and such huts were by such practice

LANDLORD AND TENANT—*continued.*

24. BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS—*continued.*

move them PARBUTTY BEWAH *v.* WOOMATARA DABEE [14 B. L. R., 201

549. ———— Removal of buildings on

the building is not taken down by the builder during the continuance of any estate which he may possess. IN THE MATTER OF THE PETITION OF THAKOOR CHUNDER PARAMANICK [B. L. R., Sup. Vol., 595: 6 W. R., 228

This case contemplates the case of an admitted sale by a vendor in possession, not a case where the title and possession are disputed MUDHOO SOODUN CHATTERJEE *v.* JUDDOOPUTTY CHUCKERBUTTY [9 W. R., 115

Held not applicable to other than innocent purchasers. SOHUN SINGH *v.* KEOLA BIBEE [16 W. R., 169

550. ———— Removal of buildings—

551. ———————— *Sale by tenant*

contract. The contract is entire and single. If a portion of a tenure be sold either by the tenant or in execution of a decree of the Civil Court against the

LANDLORD AND TENANT—*continued.*

24. BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS—*continued.*

the tenants without being liable to pay them compensation, even if the tenancy had come to an end *Held* also that, as the land was acquired by the

buildings. *Juggut Mohinee Dossee* v. *Dwarka Nath Byfack, I. L. R., 8 Calc, 582*, distinguished. DUNIA LAL SEAL v GOPI NATH KHETRY

[I. L. R., 22 Calc., 820

566 ——— *Lease granted by Hindu widow for long term of years—Death of widow—Voidable lease—Suit by heir to recover*

in the property to the plaintiff In 1885, the widow granted a lease of the property to defendants for fifty-nine years at a rent of R50 a year. She died the following year (1886) The defendants continued in possession of the property under the lease and expended money in improvements. In 1892, the plaintiff as purchaser from the adopted

to go on improving the property, and took no steps to warn the defendants until he brought this suit to recover possession. His conduct was such as to induce a belief in the minds of the defendants that the lease would be treated as valid. There was not merely a lying by, but a lying by under such circumstances as to induce a belief that a voidable lease would be treated as valid DATTAJI SAKHARAM RAJADIKSH v. KALBA YESE PARABHU I. L R., 21 Bom., 749

567. ——— *Tenant erecting*

value on the determination of the tenancy, merely because he has acted under the mistaken belief shared by his landlord that he had a larger interest in the property than he really had. JIVOMOHANDAS VIMDRAWANDAS v. PALLONJEE EDULJEE MORSDEWA

[I. L R, 23 Bom, 1

568. ——— *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887), ss. 1, 2, 4, 6—Mode of assessing compensation for improvements*—The sum to be allowed for compensation for a tenant's improvements under Madras Act I of 1887 is not to be determined by capitalizing either the annual rent or the annual increment due to the improvement, but a reasonable sum should be awarded, assessed with reference to the amount by which the market-value or the letting-value or both has been increased thereby; and the Court should take into consideration the actual condition of the improvement at the time of the eviction, its probable duration, the labour and capital which the tenant has expended in effecting it, and any reduction or remission of rent or other advantage which the landlord has given to the tenant in consideration of the improvement In the absence of evidence as to the actual market-value in the place where the land is situated, the reasonable mode of estimating the compensation consists in taking the cost of the improvement and interest thereon and in adjusting the compensation to be awarded with reference to the matters specified in s. 6. VALIA TAMBURATTI v. PARVATI PARVATI v. VALIA TAMBURATTI . . I. L. R., 13 Mad., 454

569. ——— *Malabar Compensation for Tenants Improvements Act (Mad Act I of 1887), s 7—General Clauses Consolidation Act s 6*—A suit to recover property in Malabar demised on kanom was pending when the Malabar Compensation for Tenants Improvements Act came into force. *Held* on the construction of ss. 1, 5, 7, that the tenants' right to compensation should be dealt with in accordance with the provisions of that Act MALIKAN v SHANKUNNI

[I. L. R., 13 Mad., 502

570. ——— *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887), ss 3 and 6—Coconut trees—Valuation of improvements—Redemption of kanom tenure.*—In a suit to redeem a kanom in Malabar, it appeared that the plaintiff paid into

[I. L. R., 13 Mad., 407

571. ——— *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887) s. 3—Suit to redeem kanom*—The sum to be allowed for tenants' compensation for improvements under Madras Act I of 1887 is to be

LANDLORD AND TENANT—*continued.*

24. BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS—*continued.*

calculated in proportion to the extent to which the estate has been permanently improved. The improvement for which compensation is payable as defined in s. 3 of the Act is not the tree itself, but the work of planting, protecting, and maintaining it. The calculation must not be based on the future produce of the tree. KUNHI CHANDU NAMBIAR *v.* KUNKAN NAMBIAR . I. L. R., 19 Mad., 384

572. ——— *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887), ss. 6 (c) and 7—Tenant's agreement in 1890 not to claim compensation for improvements already made— Reduction of rent—Claim to make deduction from the value of improvements on account of reduction of rent.*—In an ejectment suit relating to agricultural property in Malabar, it appeared that the tenant was in possession under an agreement executed in 1890, in which it was recited that the tenant's father had been let into possession thirty years previously at a

admittedly related to improvements made since January 1886 *Held* that the provisions relied on by the plaintiff were invalid under the Malabar Compensation for Tenants Improvements Act, 1887, s 12. *Held* also *per* SUBRAMANIA AYYAR, J. reduction andlord to s (c), and accordingly that the plaintiff was entitled to evict only on payment of the value of improvements free from any deduction. UTHUNGANAKATH AYUTHALA *v.* THAZHATHARAYIL KUNHALI

[I. L. R., 20 Mad., 435

573. ——— *Compensation for improvements and arrears of rent set off.*—As regards the right to the value of improvements, there is no distinction between a tenant under a kanom and under a verumpattom. The right of the land-

I. L. R., 21 Mad., 153

See ACHUTA *v.* KAL . L. R., 7 Mad., 545

574. ——— *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887), ss 4 and 7—Improvements made before and after 1st January 1886.*—Malabar Compensation for Tenants' Improvements Act, 1887, s. 7, cannot be construed retrospectively so as to invalidate agreements made with respect to improvements prior to the passing of the Act. In computing, therefore, the value of improvements made by a tenant in Malabar, who was let into possession under an agreement before the passing of the Act, it is necessary to ascertain the value of improvements

575. ——— *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887)—Timber trees—Suit to redeem mortgage.*—In a suit to redeem a kanom of land on which timber has grown, the jenmi is not entitled to be credited with half the value of the timber. ACHUTAN NAYAR *v.* NARASIMHAM PATTER

[I. L. R., 21 Mad., 411

576. ——— *Tenant's right to compensation—Mortgage by tenant without notice to landlord—Acceptance of surrender by landlord—Rights of landlord and mortgagee.*—The right of a tenant in Malabar to compensation is analogous to the right to a chose-in-action; and a transfer of such a right by a tenant to a third party cannot affect the landlord unless the latter has notice of the transfer when he accepts the surrender of the property demised and settles the account with his tenant in reference to arrears of rent and the amount due as compensation. *Quære*—Whether notice to a landlord of such a transfer would affect his right to set off arrears of rent due to him against the amount payable as compensation. VASUDEVA SHENOI *v.* DAMODARAN . . I. L. R., 23 Mad., 86

25. MIRASIDARS.

577. ——— Nature of tenancy—*Yearly*

to the contrary, had not acquired by prescription a

such a right as against a mirasidar. NARAYAN VISAJI *v.* LAKSHUMAN BAPUJI . 10 Bom., 324

578. ——— *Right to perpetual tenancy—Sanad—Evidence of title—Perpetual cultivation—Long possession—Local custom.*—Mirasidars who had sanads but who have

plaintiff claimed to hold certain lands in miras and under a right of perpetual cultivation by the custom

of the country, and sought to recover the lands from the defendant who claimed as purchaser, at a Court sale, of the right, title, and interest of the inamdar of the said lands, and the lower Courts dismissed the suit on the ground that the plaintiff had failed to

leged right in the lands, the High Court in special

VISHNUBHAT *v.* BABAJI
[I. L. R., 3 Bom., 345 note

579. ——— *Miras tenures —Right of occupancy in mirasi land.*—The mirasidar is the real proprietor of mirasi land, but raiyats may be entitled to the perpetual occupancy of mirasi

rent from 1856. Defendants denied plaintiff's title The Civil Judge (reversing the decree of the Munsif) dismissed the suit on the ground that the plaintiff had not proved the collection of the perquisites claimed within twelve years before the institution of the suit *Held* (reversing the decree of the Civil Judge) that if the defendants were sukavasi raiyats and the plaintiff was sole mirasidar, and in that right entitled to certain annual dues for all lands cultivated by such raiyats immediately on their being brought under cultivation, plaintiff's suit was not barred, except as to rent payable more than three years before suit. KRISHNAMA CHARYAR *v.* TOPPAI GAUNDAN . . . . 3 Mad., 381

581. ——— Right to dues from cultivators—*Custom.*—It can by no means be laid down as a uniform rule that mirasidars are entitled to dues from cultivators holding lands within the area of the mirasi estate under pottahs from the Government.

hand, in the regulations the intention of the Government is declared to respect the privileges of landholders of all classes. SAKKAJI RAU *v.* LUTCHMANA GAUNDAN . . . I. L. R., 2 Mad., 149

582. ——— Right of occupancy—*Abandonment—Waste lands—Mad. Act II of 1864.*—The plaintiffs, village mirasidars, sued to eject defendants in possession of the waste lands of the village and to obtain a pottah for the same. The

the village, and that on each occasion the mirasidars

lands, and subsequent to the last occasion, in 1867, the lands were put up to auction for arrears of kist.

authorities in the course they had adopted. The

thing which could be regarded as amounting to the creation or recognition of a permanent right in the

had been wrongfully dispossessed, their only action would be against the Government for such wrongful dispossession, and the relief sought in the present

ejected except for the reasons and by the process prescribed by Madras Act II of 1864; that, not having been lawfully ejected, they were still the rightful holders, and, twelve years not having elapsed since the date of their ejectment, could claim to be restored; and that the special appeal should

LEASE—*continued.*

1. CONSTRUCTION—*continued.*

registration under s. 17 (4) of the Registration Act VIII of 1871, being leases of immoveable property from year to year or reserving a yearly rent. *Held* that the two sirkhats created no rights except those

before the lapse of the term at fifteen days' notice. KHUDA BAKHSH *v.* SHEO DIN I. L. R., 8 All., 405

14. ——— *Right of occupancy—Permanent cultivator—Paracudi*.—The defendant's ancestors or predecessors in title were the cultivating tenants of the lands of a certain temple from a date not later than 1827, in which year they were so described in the paimaish accounts. In 1830 they executed a muchalka to the Collector, who then managed the temple, whereby they agreed among other things to pay certain dues. They were described in the muchalka as paracudis. In 1857, the plaintiff's predecessors took over the management of the temple from, and executed a muchalka to, the Collector whereby he agreed, among other things, not to eject the raiyats as long as they paid kist. In 1882 the dues (which were payable separately), having fallen into arrear, the manager of the temple sued to eject the defendants *Held* that there was nothing to show that the defendants were more than tenants from year to year. *Chockalinga Pillai* v. *Vythealinga Pundara Sunnady, 6 Mad., 164*, and *Krishnasami* v. *Varadaraja, I. L. R. 5 Mad., 345*, discussed and distinguished. THIAGARAJA *v.* GIYANA SAMBANDHA PANDARA SANNADHI

[I. L. R., 11 Mad., 77

15. ——— *Permanent ijara lease—Right of heirs of demisee*.—A fixed permanent ijara pottah confers no rights on the heirs of the demisee. RAJARAM *v.* NARASINGA

[I. L. R., 15 Mad., 199

16. ——— *Perpetual tenancy*.

Gangabi v. *Kalapa, I. L. R., 9 Bom., 419*, and *Gangadhar Bhikaji* v. *Mahadu, P. J. for 1899, p. 321*, referred to RAMABAI SAHEB PATWARDHAN *v.* BABAJI . . I. L. R., 15 Bom., 704

17. ——— *Pottah prescribing rent to be paid permanently by tenant*.—In 1840 a mittadar granted to a tenant a pottah for certain land in which the tenant had already a heritable estate,

upon neighbouring lands of similar quality and description. *Held* that the facts of the case were

LEASE—*continued.*

1. CONSTRUCTION—*continued.*

18. ——— *Permanent ten-*

and had been let to the defendant's father under a mu-

...eyond ...ess or ...that ...lefen-

Reddi, 1 Mad., 75, and *Nallatambi Pattar* v. *Chinnadeyanayagam Pillai, 1 Mad., 109* doubted. The judgment in the case of *Venkataramanier* v. *Ananda Chetty, 5 Mad., 122*, has gone too far in laying down the rule as to a pottahdar's right of occupation. CHOCKALINGA PILLAI *v.* VYTHEALINGA PUNDARA SUNNADY . . . 6 Mad., 164

19. ——— *Permanent tenancy on continuing to pay rent*.—Suit to recover the proprietary right in a village belonging to plaintiff's muttah, which was let to defendant's father under a pottah and muchalka, and which on the death of her father and since the defendant refused to surrender, upon the grounds (1) that the right had been leased permanently, subject to the regular payment of the stipulated rent, which condition had been strictly fulfilled; (2) that her father had expended large sums in making substantial permanent improvements in the village, and that he had by gift transferred the tenancy to her. *Held* that, on the true

LEASE—*continued.*

1. CONSTRUCTION—*continued.*

indeterminable as long as the stipulated rent was paid. *Chockalinga Pillai v. Vythealinga Pandura Sunnady, 6 Mad., 164*, followed. FOULKES v. RAJAHRATHNA MUDALI . . . 6 Mad., 175

20. ——— Lease of jungle lands—*Continuous possession—Commencement of lease.*—In a lease which provides for rent-free possession for twelve years, the rent-free possession contemplated does not necessarily date from the year of the lease, so that in a suit more than twelve years after the granting of the lease the lessee is entitled to plead that he has not yet had possession rent free for twelve years. BHARUT CHUNDER ROY v. ISSUR CHUNDER SIRCAR . . . 2 W. R., Act X, 78

21. ——— Death of lessee, Effect of—*Lease not limited to life of lessee.*—Any leasehold estate, when not expressly limited to the life of the lessee, passes to his heirs in the same way as other property, and if the heirs take the estate of the deceased lessee, they take it with all rights and responsibilities DANOOLLAH v. AMANUTOOLLAH [16 W. R., 147

RADHA KISHORE ROY v. SITTOO SIRDAR [24 W. R., 172

22. ——— *Lease at will of lessee.*—A lease of land, whereby the lessee is given the power of holding the land as long as he pleases, is determined by the death of the lessee VAMAN SHRIPAD v. MAKI . . I. L. R., 4 Bom., 424

23 ——— Death of lessor or lessee—*Lease for term of years—Joint liability of lessees.*—In the absence of words to the contrary, a lease of zamindari rights for a term of years does not terminate before the expiration of the term by the mere fact of the death of either the lessor or lessee. *Tej Chund v. Sree Kanth Ghose, 3 Moore's I. A., 261*, and *Burdakant R. y v. Aluk Munjooree Dassah, 4 Moore's I. A., 321*, relied on. On the question whether the lessees in this case were jointly as well as severally liable —*Held* that the terms of the lease indicated that the liability of the lessees was intended to be several, but equal in extent. BADRINATH v. BHAJAN LAL . . . I. L. R., 5 All., 191

24. ——— Extension of term for which lease is granted—*Lease to remain till called on to vacate.*—A provision in the lease that the tenant might after six months remain in occupation at a monthly rent till called on to vacate does not extend the term for which the lease is granted. MORA VITHAL v. TUKARAM VALAD MALHARJI [5 Bom., A. C., 92

25. ——— Tenancy at will—*Agreement to pay rent—Custom—Notice to quit.*—An agreement to pay rent in the ordinary form of muchalka given by tenants from year to year already in possession is not a lease. A tenancy from Fasli to Fasli is not a tenancy at-will, but a tenancy from year to year. In the absence of custom to the contrary, no tenant from year to year in this country can be ejected without being served at a reasonable time beforehand with a notice to quit at the period of the year at which the tenancy commenced. ABDULLA RAWUTAN v. PAKKERI MOHOMED RAWUTAN [I. L. R., 2 Mad., 346

26. ——— *Suit for ejectment.*—Disputes arose between the Government and an adjacent proprietor, *M S*, respecting a piece of alluvial land gained by accretion, of which *M S* was then in possession. The Government required the land for public improvements. After some correspondence ... public improvements rendered it necessary for him to vacate the land. Possession was given to Government, *M S* holding the land from Government at a fixed rent and undertaking to quit possession at a month's notice. Improvements in the neighbourhood having been made by Government and *M S* being dead, notice to quit was served on his representatives, who refused to quit, on the ground that the improvements were not such public improvements as were contemplated by the correspondence and agreement. In a suit for ejectment,—*Held* that *M S* was, under the agreement, a mere tenant-at-will, and that the suit was maintainable, and the representatives of *M S* had no defence to the action. ANUNDOMOHEY DOSSEE v. DOE D. EAST INDIA COMPANY [8 Moore's I. A., 43 : 4 W. R., P. C., 51

27. ——— Lease to widow—*Re mar-*

28. ——— Provision for renewal—*Suit for possession—Stipulation as to duration.*—Where, upon a consideration of the terms set forth in the lease, it was found to be a stipulation that the jote was not to terminate *ipso facto* with the conclusion of the ijara, but that it was open to the parties to make a fresh agreement in respect of the land, upon the quantity and rents being measured and assessed

LEASE—*continued.*

1. CONSTRUCTION—*continued.*

in accordance with the productive power of the land,—*Held* that the plaintiff was entitled to a decree for khas possession the stipulation being extremely uncertain in its character, and the defendants having done nothing for years in response to the proceedings taken by the plaintiff. SHOORUT SOONDRY DABEE *v.* BINNY (JARDINE, SKINNER & Co.)

[25 W. R., 347

29. ———— **Nature of grant**—*Intention of parties—Estate for life or inheritance.*—In order to determine the question whether a pottah granted by a zamindar conveyed an estate for life only or an estate of inheritance,—*Held* that it was necessary to arrive, as well as could be done, at the real intention of the parties, to be collected chiefly from the terms of the instrument, but to a certain extent also from the circumstances existing at the time, and further by the conduct of the parties since its execution. WATSON & CO. *v.* MOHESH NARAIN ROY

[24 W. R., 176

30. ———— **Words conveying right to hold at fixed rates.**—It is not absolutely necessary that any particular form of words should be used in conveying rights to hold at fixed rates. UNNODA PERSHAD BANERJEE *v.* CHUNDER SEKHUR DEB . . . . . . 7 W. R., 394

AFSAR MUNDUL *v.* AMEEN MUNDUL

[8 W. R., 502

KAILAS CHANDRA ROY *v.* HIRALAL SEAL. FAKIR CHAND GHOSE *v.* HIRALAL SEAL

[2 B. L. R., A. C., 93: 10 W. R., 403

31. ———— **Hereditary lease**—*Continuance of lease dependent on continuance of superior tenure.*—Though the lease in this case contained no words importing an hereditary character, yet it was held to have the effect of being hereditary, on the ground that the period of its continuance was not dependent on the life of any party, whether lessor or lessee, but on the continuance of the superior tenure. LEKRAJ ROY *v.* KANHYA SINGH . 17 W. R., 485

32. ———— *Pottah for building purposes—Omission of words defining grant.*—

[illegible]

fixed for ever, even though no such words were used as "istemrari" or "ba-furzundan" BINODE BEHARY ROY *v.* MASSEYK . . 15 W. R., 494

33. ———— *Absence of words*—

[illegible]

exists of long uninterrupted enjoyment of a tenure, accompanied by recognition of its hereditary and transferable character, it is sufficient to supply the want of the words "from generation to generation" in the pottah, and the tenant cannot be dispossessed by his superior. DHUNPUT SINGH *v.* GOOMUN SINGH

[9 W. R., P. C., 3: 11 Moore's I. A., 433

34. ———— *Absence of words fixing rent—Lease for building purposes.*—Where a pottah recited that the rent was to be paid from father to son, who were to occupy the land and build a house thereon, although there were no formal words to the effect that the rent was never to be changed, the fixed character of the rent was presumed from long and uninterrupted enjoyment and the descent of the tenure to the present occupant. PEAREE MOHUN MOOKERJEE *v.* RAJ KRISTO MOOKERJEE

[11 W. R., 259

35. ———— *Istemrari—Hereditary tenure.*—Where, by an old pottah, lands forming part of a zamindari had been leased at a specified rent, but there were no words in the pottah importing the hereditary and istemrari character of the tenure,—*Held* that the absence of such words was supplied by evidence of long and uninterrupted enjoyment, and of the descent of tenure from father to son, whence that hereditary and istemrari character might be legally presumed. SATYA SARAN GHOSAL *v.* MAHESH CHANDRA MITTER

[2 B. L. R., P. C., 23: 12 Moore's I. A., 63
11 W. R., P. C., 10

DEEN DYAL SINGH *v.* HEERA SINGH

[2 N. W., 338

36. ———— *Long uninterrupted enjoyment—Onus probandi.*—To rebut the evidence afforded by long uninterrupted enjoyment, and the descent of the tenure from father to son, it lies upon the party asserting the holding to be from year to year only and determinable at will to prove such assertion. DEEN DYAL SINGH *v.* HEERA SINGH

[2 N. W., 338

37. ———— Although a pottah purported to be a grant only to the particular person to whom it was made, yet as it passed from father to son, and son to grandson, and possession was taken under it and continued from between 75 and 80

[illegible]

38. ———— *Assessment, Right of—Assessment in perpetuity.*—Where a lease of lands to be reclaimed from the sea by the lessee, granted by a former Government to plaintiff, stipulated that the lands should be held free of assessment (muafi) for thirty years subject to assessment at R1 per bigha in the thirty-first year, to assessment increasing at the rate of ¼ of a rupee per bigha during the six following years, and at the expiration of that istawa (period of annually increasing assessment) should be held at the full assessment of R3 per bigha,—*Held* that, after the expiration of the first thirty-seven years, the lease was one in perpetuity, subject to the annual payment of the sum named as

LEASE—*continued.*

1. CONSTRUCTION—*continued.*

the full assessment and no more. COLLECTOR OF COLABA *v.* GONESH MORESHVAR MEHENDALE
[10 Bom., 216

39. ——————— *"Talukh," Meaning of.*—The word "talukh" imports a permanent

GOOPTO *v.* MEER SAFDUR ALI . 22 W. R., 326

40. ——————— *Meaning of ta bahali bundobust sircar.*—A pottah, under the ordinary meaning of the words "ta bahali bundobust sircar," was to endure as long as the settlement ODIT NARAIN *v.* MOHESHUR BUX SINGH
[Agra, F. B., 52: Ed. 1874, 39

41. ——————— *Mokurari istemrari—Hereditary right.*—The words "mokurari istemrari" contained in a pottah must be taken in themselves to convey an hereditary right in perpetuity. LAKHU COWAR *v.* ROY HARI KRISHNA SINGH . 3 B. L. R., A. C, 226: 12 W. R., 3

MUNRUNJUN SINGH *v.* LELANUND SINGH
[3 W. R., 84

LEELANUND SINGH *v.* MONORUNJUN SINGH
[5 W. R., 101

42. ——————— *"Mokurari istemrari."—Quære.*—Whether, in the absence of any usage, the words "mokurari istemrari" mean permanent during the life of the grantee, or permanent as regards hereditary descent. LILANUND SINGH *v.* MUNORUNJUN SINGH . 13 B. L. R., 124
[L. R., I. A., Sup. Vol., 181

43. ——————— *Perpetual lease*

it I exe-
m mon-
bighas,
you will
Moku-

butty assents." A subsequent purchaser of the zamindari right obtained a fresh settlement of the

KARUNAKAR MAHATI *v.* NILADHRO CHOWDHRY
[5 B. L. R., 652: 14 W. R., 107

44. ——————— *Mokurari—Words of inheritance.*—In 1798 a mokurari pottah of a portion of a zamindari was granted to *A* at a consolidated jama of R6 for the term of four years.

LEASE—*continued.*

1. CONSTRUCTION—*continued.*

a lease raises no presumption that the tenure was intended to be hereditary, and therefore, in order to decide whether a mokurari lease is hereditary, the

In the same case on appeal to the Privy Council, —*Held* the word "mokurari" does not necessarily import

brought the land under cultivation and died in posses-

such intention was not shown. BILASMONI DASI *v.* SHEOPERSHAD SINGH
[I. L. R., 8 Calc., 664: L. R., 9 I. A., 33
11 C. L. R., 215

45. ——————— *Construction of pottah as to duration—Use of the word "moku-*

[I. L. R., 10 Calc., 342

46. ——————— *Meaning of the words "istemrari mokurari" in connection with grant of lands—Intention of parties.*—The words

LEASE—*continued.*

1. CONSTRUCTION—*continued.*

"istemrari mokurari" in a pottah granting land do

that the question was whether the intention of the parties that the grant should be perpetual had, or

RAMNARAIN SINGH

[I. L. R., 12 Calc., 117 : L. R., 12 I. A., 205

47. ———— *Istemrari pottahs—Hereditary title—Construction of pottah.*—

48. ———— *Lease containing words of inheritance not inalienable—Khoti Act (Bom.) I of 1880, s. 9*.—The khots of the village of A in 1854 leased certain land to *B* by a lease which declared that "you (*B*) are to enjoy, you and your sons, grandsons, from generation to generation." The rent fixed by the lease was eleven maunds and six-and-a-half pailis of bhat per year. *B* having died, his widow in 1878 transferred the lease to the plaintiff,

the fixed rent, but there were no words making the lease inalienable. There was no evidence of any custom of the village, nor anything in the Khoti Act (Bombay) I of 1880, which could be construed as a declaration of the existing custom of khoti villages when the Act was passed. VINAYAK MORESHVAR *v.* BABA SHABUDIN . I. L. R., 13 Bom., 373

49. ———— **Amount of land leased**—*Boundaries—Estimated area.*—In order to ascertain what land is actually leased, it is necessary to look to the boundaries mentioned in the lease, and not to the estimated area. ABDOOL MANNAN *v.* BARODA KANT BANERJEE . . . . 15 W. R., 394

50. ———— *Boundaries—Estimated area.*—Where a pottah purports to convey so many bighas of land "more or less" within certain boundaries, the test of what is really conveyed is not the area of the land, but its boundaries. SHEEB CHUNDER MAHNEEAH *v.* BROJONATH ADITYA

[14 W. R., 301

51. ———— *Ascertainment by measurement—Provision for rate of rent.*—Plaintiff let to defendant a quantity of land, of which he was not certain how much was in cultivation and how

arrears of rent, no measurement having taken place, though years had elapsed. *Held* that, until ascertainment by measurement of a settled jama, the rent due under the terms of the pottah would be the provisional sum mentioned above; but if the delay in such ascertainment were due to default of plaintiff, defendant would be entitled to set up the state of things which he believed would be arrived at if measurement were effected. BHARUTH CHUNDER ROY *v.* BEPIN BEHAREE CHUCKERBUTTY

[9 W. R., 495

52. ———— *Excess land, Rent of.*—*B* having covenanted to take from *A* without enquiry 18 bighas of land at a rent of R1 a bigha,

LEASE—*continued.*

1. CONSTRUCTION—*continued.*

v. Nehalee Churn Dey . . . 15 W. R., 410

demised lands were other lands called bheel bhuruttee lands, in which the zamindar had only a temporary interest, but which lands were included in the pottah The bheel bhuruttee lands were afterwards

annual rent. Prannath Chowdry v. Surnomoye Dossee . . . 9 Moore's I A, 431

54. ——— Covenant in lease to grant a new lease—*Subsequent lease without covenant for renewal* —*Held* by the Court of first instance, and confirmed on appeal, that a covenant in a lease for years to grant a new lease on the expiration of the existing term under and subject to all covenants, as in the first lease contained, is satisfied, if such new lease contain the like covenants as the former lease, except the covenant for renewal Peninsular and Oriental Steam Navigation Company v. Konnoylall Dutt . . . 2 Hyde, 21

55. ——— Stipulation to renew lease —*Re-letting — Holding over* —Where a kabuliat stipulates that *A*, the tenant, shall not, on the expiry of his lease, be liable to pay a rent higher than that reserved in the lease, and that the landlord shall not then let the land to any other tenant, but that *A* shall not be entitled to erect any permanent building, or to excavate a tank, it was held that under these

56. ——— Covenant for renewal—*Ambiguous covenant—Right to remove soil and open mines—Interpretation by acts of the parties—Estoppel—Confirmation—Land Acquisition Act, X of 1870* —A lease for ninety-nine years made in 1794 by the East India Company to *W* contained a covenant that the said Company, upon application

LEASE—*continued.*

1. CONSTRUCTION—*continued.*

of the heirs, executors, administrators, and assigns of the said *W*, would re grant and renew the said lease thereby made "on the terms and conditions above mentioned," etc. *Held* that the above covenant was not a covenant for perpetual renewal of the lease, but a covenant for a single renewal only. The above lease granted to the said *W*, his heirs, executors, ad-

guous, and had been interpreted by the subsequent conduct of the parties themselves, who had always

of State, of the lease of 1794 A schedule to the indenture described the property comprised in the

positio. Even if the words quarries or mines had been used in the lease of 1794, they would have given no right to work quarries or mines other than those open when the tenant came in, which, moreover, he might have worked in the absence of such words.

it inequitable in the Secretary of State now to assert his claims under the lease. *Held* also that the indenture of May 10th, 1870, did not operate as a fresh demise of the premises in their condition at the date

LEASE—*continued.*

1. CONSTRUCTION—*continued.*

57. ——————— *Kabuliat, Construction of—Stipulations as to rent of new chur—Hawaladari tenure—Measurement and assessment of chur land—Landlord and tenant—Beng. Act VIII of 1869, s 14.*—A kabuliat, executed by

at a specified rate up to five drones, and for any

the hawaladar, require him to take a settlement of the excess land, and within fifteen days to file a kabuliat, or (*c*) the excess land might be settled with others. Such a chur having been formed, the zamindar measured without notice to, and in the absence of, the hawaladar. He then served a notice on the latter requiring him to execute a kabuliat within fifteen days for payment of a fixed rent upon the excess land as found by the measurement, or to yield up possession. Disregard of this led to a suit in which the zamindar claimed either *khas possession or rent on* measurement by order of Court. *Held* that neither the

that effect, or affect the measurement by the Amin; but that, until both the measurement and the assessment of the rent had taken place (which might be either in the manner prescribed or by judicial termination) the zamindar could not put the hawaladar to his choice between (*b*) executing a kabuliat for the rent and (*c*) yielding up possession. RAMKUMAR GHOSE *v* KALIKUMAR TAGORE

[I. L. R., 14 Calc., 99
L. R., 13 I. A., 116

58. ——— Provision for indigo concern passing into hands of others—*Assign-*

heirs, or those who would succeed to their rights, would pay the rent. After the kabuliat was given, *N* made over his interest in the lease to *D*. *Held* that, in passing from *N* and *D* to *D* alone, the lease had passed into the hands of "others" within the meaning of the kabuliat, and that *D* occupied the position of the persons contemplated by the terms "those who will succeed to our rights." BHOBANEE CHUNDRA MITTER *v.* MACNAIR . . . 10 W. R., 464

59 ——— Joint lease—*Joint liability for rent.*—When a lease is granted jointly to two tenants, both are jointly liable for the rent due under the lease, and one of them cannot divide this joint liability. JOGENDRA DEB ROY KUT *v.* KISHEN BUNDHOO ROY . . . 7 W. R., 272

LEASE—*continued.*

1. CONSTRUCTION—*continued.*

ROOPNARAIN SINGH *v.* JUGGOO SINGH
[10 W. R., 304

BHOLANATH SIRCAR *v.* BAHARAM KHAN
[10 W. R., 392

GOUR MOHUN ROY *v.* ANUND MUNDUL
[22 W. R., 295

60. ——— *Definition of right of each lessee in pottah—Separation of tenures.*—The fact that at the foot of a pottah the right of each lessee was defined was held not to bind the lessor to recognize each part as an independent and separate tenure, and the subsequent separate payments of rents by the tenants was held not to vary the nature of the tenure. BULORAM PAUL *v.* SUROOP CHUNDER GOOHO . . 21 W. R., 256

61. ——— Lease of jungle-lands—*Suit alleging interruption of lease to cut trees, etc.*—

tract, and was the only contract between the parties. A lessee who sues, alleging that there has been an interruption to his lease to cut or sell the trees on the land included therein, must base his right, first,

express terms of the lease. RUTTONJEE EDULJEE SHET *v.* COLLECTOR OF THANNA

[10 W. R., P. C., 13: 11 Moore's I. A., 295

62. ——— Breach of covenant not to injure trees—*Construction of kabuliat.*—A kabuliat on which the tenant undertook to preserve certain trees in a jungle and not to injure them in any way, providing that, if he relinquished the talukh after destroying the jungle, he would pay R2,000 as the value of the trees, was construed to contain two distinct covenants, the second being a covenant not to injure the trees, on breach of which damages could be recovered. WOOMA SOONDUREE DOSSEE *v.* RAJKISTO ROY . . . 21 W. R., 366

63. ——— Lease of jungle lands by Government—*Right to cut timber.*—Where jungle land was let by Government to a tenant for

64. ——— Agreement for certain dues

LEASE—*continued.*

1. CONSTRUCTION—*continued*

temple upon payment of the circar tirva and a swamibogam mentioned in the agreement. Subsequently to the agreement, the Government notified that the melvarum payable to the Government would be thenceforth permanent and not according to the nerick ascertained by reference to the market prices in certain towns, and the Government stated that any advantage arising from the change of system should go to the raiyats themselves The plaintiffs sued the defendants to recover the balance of the market value of the produce of the land cultivated by the defendants after deducting the amount of circar kist paid by them. *Held* (reversing the decree of the lower Court) that the defendants were only liable to pay the amount of swamibogam mentioned in the agreement, and that no right was acquired by the plaintiffs by virtue of the subsequent arrangement made by the Government. THESIKAM IYENGAR v. GANAPATHY IYER . . 4 Mad., 320

65. ———— Fishery pottah—*Deprivation of fishery by order of Court.*—The provision in a fishery pottah that the lessee cannot sue for recovery if, through his own neglect or otherwise, he fail to catch fish, was held to be no bar to the lessee's claim to a refund of rent from the time that possession of the subject of the lease was taken away, by order of a competent Court, from his lessor, and consequently from him RAM GOPAL SEIN v. ALLUM MULLICK [7 W. R., 405

66. ———— Stipulation in lease for conversion of dry land into wet land—*Stipulation in accordance with local custom* —A pottah is enforceable which contains a stipulation that "if nunja cultivation be made on punja land permanently converted into nunja with or without water of the landlord's tank, nunja tirva according to the rate fixed for such cultivation shall be paid," when such stipulation is in accordance with local custom. SATTAPPA PILLAI v. RAMAN CHETTI I L. R., 17 Mad., 1

67. ———— Agricultural lease—Lease of a coffee garden—*Transfer of Property Act (IV of 1882), s. 117* —A lease of a coffee garden is not an agricultural lease within the meaning of the Transfer of Property Act, s 117. KUNHAYEN HAJI v. MAYAN . . I L. R , 17 Mad , 98

68. ———— Payment of rent—*Provision*

amount due for that month he should from the first day of the succeeding month pay interest upon the amount in arrear, the Court held that the Judge below was not correct in his construction of the

69. ———— *Payment by instalments.*—It is contrary to usage to pay by monthly kists unless there is a special agreement to that effect. JOY KISHEN MOOKERJEE v. JANKEE NATH MOOKERJEE . . . . 17 W. R , 471

70. ———— Proviso for re-letting in

another lease *Held* that the introduction of this

71. ———— Proviso for default in payment of rent—*Appointment of sezawal - Condi-*

standing the appointment of such sezawal, the arrears of rent were not paid by the end of the year, the lessor should be at liberty to rescind the lease *Held* that it was a condition, precedent to the right of the lessor to rescind the lease, that he should have appointed a sezawal. LALL LITCHMEE PERSHAUD v. BHOODHUN SINGH . . Marsh , 474

72. ———— Right of re-entry for non-payment of rent—*Act X of 1859, s 22* —Where a lease provided that in case of a default in the payment of rent, the lessor should have the power of re-entry without expressly mentioning the mode of effecting it, the lessor was bound to exercise this power according to the provisions of the law, s 22, Act X of 1859. SOLANO v. HOORMUT BAHADOOR [1 Hay, 573

73. ———— Right of re-entry—*Implied right of re entry* —Although a pottah does not con-

74 ———— *Conditional lease—Right to recover property.*—If a party leases an estate in patni, reserving to himself the right of re-entry on condition of his wishing to hold the property khas, he cannot sue to recover possession for the purpose of leasing it to a third party. RUGHOONATH COONDOO v. HURISH CHUNDER ROY [W. R., 1864, 323

75 ———— *Hereditary tenures—Lessor's right of re-entry—Cause of action*—Where ...

tains a condition whereby the lessor agrees not to Pu

LEASE—*continued.*

1. CONSTRUCTION—*continued.*

an end to the mokurari of his lessee, except on the occurrence of a fresh settlement on the part of Government, it does not follow that the lessor intends to constitute a hereditary lease if no Government settlement took place. In such a case a lessor's right to re-enter arises on the death of the lessee; but if the representatives of the lessee have been allowed to hold over by the heirs of the lessor, to whom they have paid rent, the cause of action to a purchaser of the lessor's rights and interests arises on the refusal of the lessee's representatives to permit him to re-enter. LEKHRAJ ROY v. KANHYA SINGH

[14 W. R., 262

76. ———— **Proviso against sub-letting** —*Breach of condition in lease—Omission of clause for re-entry—Act X of 1859, s. 23, cl. 5—Suit for ejectment.*—A lease contained a stipulation that the raiyat should give up such part of the land as was unfit for the cultivation of indigo, and should not sublet the same. *Held* that, as the lease contained no proviso for forfeiture, or right of re-entry for the breach of this covenant, the landlord was not entitled upon such breach to maintain a suit under Act X of 1859, s 23, cl. 5, to eject the raiyat. GOOROOPERSAUD SIRCAR v. PHILIPPE Marsh., 366: 2 Hay, 451

77. ———— *Breach of condition.*—Where a lease contained a stipulation against sub-letting without the lessor's consent, and the lease violated this stipulation, it was held that the stipu-

[7 Bom., A. C., 69

78. ———— **Right to assign or sub-let** —*Conditions attached to zamindar's estate—Construction of lease.*—The right to assign or sub-let is as well established an incident of a tenancy at a rent for a determinate period when the contract of letting is silent on the subject, as it is of an estate for life or of inheritance, and there is nothing in the nature of the conditions attached to a zamindari estate which renders an assignment of a lease of such estate an exception to the general rules *Held*, on the construction of a lease, that the language did not evidence a contract purely personal to the lessee and his heir so as to exclude the right to assign VENKATASAMY NAICK v. MUTHUVIJIA RAGUNADA RANI KATHAMA NATCHIAR *alias* KULANDAPURI NATCHIAR . . . . . . 5 Mad., 227

79. ———— **Prohibition against alienation.**- A pottah which provided that the grantor was not to alienate or lease the property to any other party during the term of the pottah, without giving the lessees under the pottah the refusal, was upheld. MOHIMA CHUNDER SEIN v. PITAMBUR SHAHA

[9 W. R., 147

80 ———— *Mulgeni tenure, History and nature of—Alienation not a necessary incident—Clause against suffering attachment and sale valid—Right of re-entry—Clauses against alienation—Policy of the law—Transfer of Pro-*

party who held the land from the defendant under a mulgeni lease. The lease contained a clause which, after forbiding the tenant from alienating it by

land could not be attached and sold by reason of this clause. The lower Courts held that the clause was invalid, both because such a restriction on alienation was repugnant to the mulgeni tenure in contemplation of law, and because, occurring in a lease which was virtually in perpetuity, it would make the land for ever inalienable, and was therefore against public policy. On appeal to the High Court,—*Held* that the clause was not invalid on either ground. The nature and history of the mulgeni tenure considered The policy of the law, as evidenced by the Transfer of Property Act, IV of 1882, with regard to clauses against alienation, considered. *Held* also

or right of re-entry until attachment and sale had been suffered by the tenant, yet, as the attachment of itself could be of no use to the creditor, since the debtor was already prevented by his lease from alienating, and as it would be necessary, even if the attachment were allowed, to forbid the sale by a concurrent order, the attachment itself, which would under those circumstances be futile, should not be permitted VYANKATRAYA v. SHIVRAMBHAT

[I. L. R., 7 Bom., 256

81. ———— *Lease to an undivided Hindu family—Partition—Covenant against alienation—Alienation voluntary or by act of law—Attachment and sale—No clause of forfeiture or re-entry—Non-payment of rent—Rights of the mulı or landlord.*—The plaintiff leased his land under a mulgeni chetti, or lease at a fixed rent, to defendant No. 1, who then lived in union with his brothers,

latter by private contract, and were purchased respectively by defendants 4 and 5, who entered into possession. Plaintiff now sued to recover his land, contending that the breach of the covenant against alienation had worked a forfeiture, and likewise for one year's rent, claiming the whole of it from

LEASE—*continued.*

1. CONSTRUCTION—*continued.*

for forfeiture or re-entry on breach, and had no application to the case of an alienation by act of law as by attachment and sale in execution of a decree. That the plaintiff had therefore no right to recover possession from any of the defendants,—his only remedy being in damages for breach of the covenant against alienation. *Held* further that defendants 1, 2, and 3 were severally liable for the whole amount of the rent claimed, as the lease was taken by defendant No 1 for the benefit of the undivided family, and the plaintiff was no party to the partition, neither had he at any time recognized defendants 4 and 5 as his tenants TAMAYA *v.* TIMAPA

[I. L. R., 7 Bom., 262

82. ———— *Osathowla—Re-entry—Forfeiture—Sale in execution of decree—Saleable interest—Alienation by operation of law—Conditions restraining alienation.*—A sued to recover possession of certain land which was leased in osathowla by his father to B The lease expressly prohibited the lessee and his heir from making any assignment of the property either by sale or gift, but it did not contain any provision for forfeiture or for re-entry by reason of an assignment in violation of its terms, nor was there any provision restricting a sale

restriction on assignment does not apply to an assignment by operation of law taking effect *in invitum*, as a sale under an execution *Vyankatraya v. Shivrambhat, I L R., 7 Bom, 256 Divali v Apaji Ganesh, I. L. R, 10 Bom, 342*, and *Tamaya v. Timapa Ganpaya, I. L. R, 7 Bom., 262*, referred to *Held* also that, even if there had been a provision in the lease for forfeiture or for re-entry by reason of an assignment in violation of its provisions, it would

83. ———— *Condition res-*

LEASE—*continued.*

1. CONSTRUCTION—*concluded.*

84. ———— *Covenant by lessee not to purchase under-tenant's holding—Validity thereof—Covenant running with land.*—The defendants, who were patnidars of 10 annas of a certain pergunnah, gave a temporary lease of their share to the plaintiffs, the lease containing the following stipulation. "You shall not purchase the jote right of any of the tenants either in your own names or benami; if you do so, the purchase shall be null and void, after the expiry of the term, the ijara mahals will come to our khas dakhal. You shall not be able to raise any sort of objection thereto; if you raise any such objection, it shall be void" Shortly before this, the plaintiffs had obtained a lease of

mokurari of another 2 annas out of the 6 annas already leased out by the zamindars to the plaintiffs. The

contained in the lease of the zamindar is one the benefit of which ought to run with land, and that the defendants were rightly in possession WATSON & Co *v.* RAM CHAND DUTT . 1 C. W. N., 174

2. ZUR-I PESHGI LEASE

LALL *v.* BALUK . . . 2 Agra, 122

PULTUN SINGH *v.* RESHAL SINGH . 1 W. R., 7

86. ——

lease—*Ac*

i-peshgi lea

ment in th

tions, but

leases) cannot be set aside because of the act of the zur-i-peshgidar granting a kutkina. The kutkina may be set aside, and the zur-i-peshgidar be liable in damages for any injury which may have accrued to the zamindar S. 25, Act X of 1859, was not applicable to such a case, but only to cases when the period of the lease had expired. But as a zur-i-peshgi lease has always been treated as a mortgage, a suit to set it aside cannot be brought in

LEASE—*continued.*

2. ZUR-I-PESHGI LEASE—*continued.*

the Collector's Court unless the terms of the lease distinctly provide for such a course of procedure in the event of a breach of any of its conditions. MAHOMED ALI v. BATOOK DAO NARAIN SINGH [1 W. R., 52

RUTTUN SINGH v. GREEDHAREE LALL [8 W. R., 310

87. ———— Rent not paid when due—*Right to set off against advances.*—Where a plaintiff let out in zur-i-peshgi certain property for a fixed period at a certain rental, in consideration of a sum of money advanced, and the defendant withheld and did not tender the rent as it fell due,—*Held* that

88. ———— Zur-i-peshgi pottah, Construction and effect of—*Raiyati holding, Creation of.*—The plaintiffs granted to the defendants a zur-i-peshgi pottah which provided for a lease for five years. It provided further that the whole of the rent for that period was to be taken by the zur-i-peshgidars on account of the profits of their zur-i-peshgi with the exception of one rupee which was to be paid yearly to the proprietors; and that, if the zur-i-peshgi money was not paid at the end of the five years, the zur-i-peshgidars would remain in possession until payment. *Held* that this deed did not create a raiyati tenure. *Bengal Indigo Co.* v. *Raghobur Das, I. L. R., 24 Calc., 272,* referred to. RAM KHALAWAN ROY v. SAMBHOO ROY [2 C. W. N., 758

89. ———— Collection of rents by zamindar—*Right to recover rents so collected.*—A zamindar, after he had granted a zur-i-peshgi lease, collected the rents from the raiyats. *Held,* first, that the lessee was entitled to treat the rents so received as a payment of rent under the lease, and, secondly, was entitled to recover from the zamindar the amounts of rents so received in excess of the rent due under the lease. RAMPERSHAD VOGUT v. RAMTOHUL SINGH . . Marsh., 655

90. ———— Suit by mortgagee for

the mortgage-debt or to have that balance realized from the sale of the mortgaged property. JUNESSUR DASS v. LALLA RAMDHUNEE LALL [17 W. R., 283

91. ———— Usufructuary lease—*Right to have property sold.*—Where a lease gives the lessee the right to continue in possession until money borrowed from him is liquidated, the lessor is put in the position of a mortgagor, and, to the extent of the security given, the lessee is in the position of a mortgagee, but the lessee is not entitled to have the property sold. KEWUL SAHOO v. RASH NARAYAN SINGH . . . . . 13 W. R., 445

LEASE—*concluded.*

LEASEHOLD PROPERTY.

See SECURITY FOR COSTS—SUITS. [7 B. L. R., Ap., 60

LEAVE TO APPEAL.

See CASES UNDER PRIVY COUNCIL, PRACTICE OF—SPECIAL LEAVE TO APPEAL.

LEAVE TO BID.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS. [I. L. R., 18 Mad., 153

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES. [I. L. R., 16 Calc., 132, 682
L. R., 16 I. A., 107
I. L. R., 19 Calc., 4
4 C. W. N., 474

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY. [I. L. R., 18 Mad., 153
I. L. R., 18 All., 31

———— Application for—

See LIMITATION ACT, ART. 179—STEP IN AID OF EXECUTION. [I. L. R., 13 All., 211
I. L. R., 21 Bom., 331
I. L. R., 23 Calc., 690

LEAVE TO DEFEND SUIT.

See COMPENSATION—CIVIL CASES. [I. L. R., 18 Bom., 717

See INSOLVENT ACT, s. 36. [7 B. L. R., Ap., 61

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON. [6 B. L. R., Ap., 64
1 Ind. Jur., N. S., 395
9 B. L. R., 441

See PRACTICE—CIVIL CASES—LEAVE TO SUE OR DEFEND. [I. L. R., 3 Calc., 370, 539

LEAVE TO DEFEND SUIT—*concluded.*

——— Application for—

See LIMITATION ACT, ART. 159. [I. L. R., 23 Calc., 573

LEAVE TO SUE.

See COMPANY—WINDING UP—GENERAL CASES . I. L. R., 16 Bom., 644

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE. [I. L. R., 24 Calc., 190

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.
[1 Ind. Jur., N. S., 218
I. L. R., 11 Bom., 649
I. L. R., 13 Bom., 404
I. L. R., 15 Bom., 93
I. L. R., 17 Bom., 466

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.
[9 Bom., 429
I. L. R., 20 Bom., 767

See JURISDICTION—SUITS FOR LAND—GENERAL CASES . 6 B. L. R., 686
[21 W. R., 204
I. L. R., 4 Bom., 482
I. L. R., 19 Mad., 448
I. L. R., 26 Calc., 891
3 C. W. N., 670

See LETTERS PATENT, HIGH COURT, cl. 12 . I. L. R., 18 Mad., 142
[I. L. R., 20 Bom., 767
I. L. R., 24 Calc., 190
1 C. W. N., 156

See PARTIES—SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.
[I. L. R., 21 Calc., 180, 181 note
I. L. R., 15 Bom., 309
I. L. R., 21 Bom., 784
I. L. R., 22 All., 269

See PRACTICE—CIVIL CASES—LEAVE TO SUE OR DEFEND.

See RIGHT OF APPEAL. [I. L. R., 17 Bom., 466

See RIGHT OF SUIT—CHARITIES AND TRUSTS . I. L. R., 10 Mad., 185
[I. L. R., 21 Bom., 257

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—ARMY ACT. [I. L. R., 18 Calc., 144

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—LEAVE TO SUE [I. L. R., 18 Mad., 236

LEGACY.

See HUSBAND AND WIFE. [I. L. R., 1 All., 762, 772

See CASES UNDER WILL—CONSTRUCTION.

——— Lapse of—

See SUCCESSION ACT, s. 96. [I. L. R., 16 Calc., 549

——— Suit for—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—LEGACY. [16 W. R., 305

See LIMITATION ACT, 1877, ART. 123.
[2 Agra, 171
13 W. R., 354
I. L. R., 9 Calc., 79
I. L. R., 19 Mad., 425

See PARTIES—PARTIES TO SUITS—LEGACY, SUIT FOR . 13 B. L. R., 142

See PROBATE—EFFECT OF PROBATE [I. L. R., 18 All., 260

See SECURITY FOR COSTS—SUITS. [I. L. R., 21 Calc., 832

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—LEGACY, SUIT FOR . I. L. R., 17 Calc., 387

——— to person appointed Executor.

See SUCCESSION ACT, s. 128. [I. L. R., 15 Calc., 83

——— Assignment of, to executors—*Void assignment—Semble*—That an assignment by a legatee to an executor of a legacy is void. VAUGHAN *v.* HESELTINE . I. L. R., 1 All., 753

See HURST *v.* MUSSOORIE BANK [I. L. R., 1 All., 762

and BERESFORD *v.* HURST [I. L. R., 1 All., 772

LEGAL NECESSITY.

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY WIDOW.

LEGAL PRACTITIONERS' ACT (XVIII OF 1879).

See CRIMINAL PROCEEDINGS. [I. L. R., 6 Mad., 252

See FALSE EVIDENCE—GENERAL CASES. [I. L. R., 6 Mad., 252

See CASES UNDER PLEADER.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, 1882, s. 622 [I. L. R., 9 Mad., 375

——— s. 10.

See MUKHTEAR . I. L. R., 4 All., 375

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—*continued.*

——— s. 13, cl. (f), and s. 14.

See MUKHTEAR I. L. R., 27 Calc., 1023

——— ss. 14 and 40—*Irregularity in pro-* [illegible]

Court, which also considered that he in consequence should be dismissed, and the same having been reported, in conformity with s. 14 of that Act, to the principal Court in the province, such dismissal was ordered. *Held* that the practitioner could not be dismissed or suspended under that section without his having been allowed, under s. 40, an opportunity of defending himself before that Court. It is within the duties of a Court, informed of the misconduct of one of the practitioners before it, to take steps to have the matter adjudicated upon. IN THE MATTER OF SOUTHEKAL KRISHNA RAO I. L. R., 15 Calc., 152 [L. R., 14 I. A., 154

——— s. 32.

See MUKHTEAR . I. L. R., 4 All., 375

——— *Outsider practising as* [illegible]

or powers which the rule framed by the High Court in accordance with the provisions of the Legal Practitioners Act says are the functions and powers of a mukhtear, he practises as a mukhtear and is liable to a penalty under s. 32 of the Act. The words "any person" in s. 32 embrace pure outsiders as well as duly qualified and enrolled mukhtears who have failed to take out their certificates. G N, though not a certificated mukhtear, [illegible]

employ me. Each of the employers I have mentioned belongs to a distinct family and lives in a separate village" *Held* that G N was neither a pri- [illegible]

s. 32 "to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court" were equivalent to the words "to a fine not exceeding R250" IN THE MATTER OF THE PETITION OF GIRHAR NARAIN. TUSSUDUQ HUSAIN *v.* GIRHAR NARAIN . . . I. L. R., 14 Calc., 556

——— s. 36.

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT—CIVIL CASES. [I. L. R., 21 All., 181 4 C. W. N., 36

——— *Legal Practitioners' Act Amendment Act (XI of 1896), s. 4—Legal proof—Nature of evidence required—Power of superintendence of High Court—Charter Act (24 & 25 Vict.,* [illegible]

in s. 36, Act XI of 1896, refer to proof by any of [illegible]

tioners Act. The High Court may interfere in such a case under the wide powers of superintendence given to it by the Charter Act. IN RE SIDDESHWAR BORAL . . . . . . 4 C. W. N., 36

See IN THE PETITION OF MADHO RAM [I. L. R., 21 All., 181

LEGAL PRACTITIONERS' AMENDMENT ACT (XI OF 1896).

See LEGAL PRACTITIONERS ACT, s. 36 [4 C. W. N., 36

See MUKHTEAR I. L. R., 27 Calc., 1023

LEGAL REMEMBRANCER.

——— Appearance by—

See PRACTICE—CRIMINAL CASES—RULE TO SHOW CAUSE I. L. R., 4 Calc., 20

LEGATEE.

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT. [I. L. R., 17 Mad., 373

LEGISLATURE, POWER OF—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW. [I. L. R., 1 Calc., 431

See BENGAL REGULATION III OF 1818. [6 B. L. R., 392, 459

See BOMBAY SURVEY AND SETTLEMENT ACT, 1865, ss. 35, 48 I. L. R., 1 Bom., 352

LEGISLATURE, POWER OF—*concluded.*

See DIVORCE ACT, s 2.
[I. L. R., 10 Bom., 422

See FOREIGNERS
[I. L. R, 16 Bom, 636

See GOVERNOR OF BOMBAY IN COUNCIL.
[6 Bom, A. C, 195
I. L. R., 8 Bom, 264

See GOVERNOR OF MADRAS IN COUNCIL
[2 Mad., 439

See HIGH COURT, JURISDICTION OF—N.-W. P.—CIVIL.
[I. L. R., 11 All., 490

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS
[7 Bom., Cr., 6
14 B. L. R., 106

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.
[I. L. R., 3 Calc., 63
I. L. R., 4 Calc, 172
L. R., 5 I. A., 178

See OFFENCE COMMITTED ON THE HIGH SEAS . 7 Bom., Cr., 89
[8 Bom., Cr., 63

See SMALL CAUSE COURT, MOFUSSIL—PRACTICE AND PROCEDURE—MISCELLANEOUS CASES . I. L. R., 1 All., 87

———— Proceedings of—

See STATUTES, CONSTRUCTION OF.
[I. L. R., 23 Calc., 1017
I. L. R., 22 Bom., 112

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT—CRIMINAL CASES.
[I. L. R., 26 Calc, 188

LEGITIMACY.

See CASES UNDER HINDU LAW—MARRIAGE

See CASES UNDER MAHOMEDAN LAW—ACKNOWLEDGMENT

LEPROSY.

See CASES UNDER HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—LEPROSY

See MALABAR LAW—CUSTOM.
[I. L. R., 13 Mad., 209

LESSOR AND LESSEE.

See CASES UNDER LANDLORD AND TENANT.

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LETTER.

———— from Judge

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—LETTERS
[1 C. L. R., 239

———— of Advice.

See EVIDENCE ACT, s. 32, CL. 2.
[9 B. L. R., Ap., 42

———— of License.

See CONSIDERATION.
[2 Ind. Jur., N. S, 243

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[12 B. L R., 317
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See EVIDENCE—CRIMINAL CASES—LETTERS
[9 B. L. R, 36: 17 W. R., Cr, 15

———— in post office.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—LETTERS IN POST OFFICE.
[I. L R., 13 Mad., 242

———— of assignment.

See STAMP ACT, 1869, s 3, ART 18.
[I. L R, 2 Calc., 58

LETTERS OF ADMINISTRATION.

See CASES UNDER CERTIFICATE OF ADMINISTRATION

See COSTS—SPECIAL CASES—LETTERS OF ADMINISTRATION.
[I. L. R., 2 Bom., 9

See ILLEGITIMACY . 11 B. L R, Ap, 6

See CASES UNDER PRACTICE—CIVIL CASES—PROBATE AND LETTERS OF ADMINISTRATION.

———— Duty payable on—

See CASES UNDER COURT FEES ACT, SCH. 1, ART 11.

———— with will annexed, Grant of—

See PROBATE—TO WHOM GRANTED.
[I. L. R., 19 Calc., 582
I. L. R., 15 Mad., 360
I. L. R., 22 Mad., 345

See SUCCESSION ACT, s. 258.
[I. L. R., 1 Calc, 149

1. ———— Jurisdiction of High Court—*British-born subject dying at Moulmein.*—In the case of a British-born subject dying and leaving assets in Moulmein, but none in Calcutta, and a will dated 5th August 1865, before Act X of 1865 came into operation,—*Held* that the executrix could not obtain probate or letters of administration with the will annexed from the High Court in Bengal. SAUNDERS *v.* NGA SHOAY GEEN . . 8 W. R., 3

LETTERS OF ADMINISTRATION —*continued.*

2. ——————— *High Court, N.-W. P.—Administrative operation in Bengal.*—A British subject died intestate, leaving property within the jurisdiction of the High Court of the N.-W. P. and of the High Court at Fort William. General

deceased had left property within the jurisdiction of

[1 B. L. R., O. C., 19

3. ——————— *Attorney of executor—Administrator General.*—The High Court had no power to grant letters of administration to the attorney of the executor of a deceased in respect

4. ——————— *Succession Act (X of 1865), ss 212, 213—Attorney within jurisdiction of Court.*—Under ss 212 and 213, Act X of 1865, it is necessary that the attorney applying for letters of administration should be within the jurisdiction of the Court. IN THE GOODS OF NESBITT IN THE GOODS OF BRIANT . . . . 4 B. L. R., Ap., 49

5. ——————— *Letters of administration or probate from Supreme Court.*—The obtaining of probate or letters of administration from

6. ——————— *Widow not resident in any zillah—Act XXVII of 1860—Act VIII of 1865.*—Where a widow, not being resident in any zillah, has not been able to get a certificate under Act XXVII of 1860, letters of administration were, on the consent of the widow, directed to issue to the Administrator General. IN THE MATTER OF DAMOODAR DOSS . . . Bourke, Test., 6

7. ——————— **Jurisdiction of Recorder's Court.**—The Recorder's Court had the same powers in respect to the grant of probates to the estates of natives as the High Court before and after the

..., and, in dealing with the will after probate has been granted, the Court could not give effect to it, so far as it is contrary to the Hindu law of inheritance. *Quære*—Whether the Recorder's Court has power to grant letters of administration, or such letters with a will annexed, to the estates and effects of a native of British India, but in all cases it must be guided in granting them by the law of inheritance or succession of such native, and it cannot grant administration to the estate of a Hindu, Mahomedan, or Bhuddist which would interfere with such law. IN THE MATTER OF THE PETITION OF FUKEEROODEEN ADAM SHAH . . . . 11 W. R., 413

8. ——————— **Administration with will annexed**—*Act VIII of 1855, s. 17—Pecuniary*

VIRGAL . . . . . 1 Bom., 103

9. ——————— **Ground for refusing letters of administration**—*Act VIII of 1855, s. 30.*—The statement of a belief by the Administrator

IN THE GOODS OF BELLASIS FOGGO *v.* LOUDON [1 Ind. Jur., O. S., 139

10. ——————— *Minor Hindu widow—Guardian—Special citation—Caveat.*—Upon an application by the father of an infant Hindu widow for the grant of letters of administration to him as her guardian and as guardian of the estate of her deceased husband, and of the estate of the hus-

sum of money in question was in the hands of the

she had no right to enter a caveat simply because she had received a special citation. IN THE GOODS OF HURRY DOSS BONERJEE . I. L. R., 4 Calc., 87

11. ——————— *Citation—Defective citation—Revocation of letters of administration—Act V of 1881, ss 16 and 50.*—*S*, a Parsi, died, leaving a will, whereby he directed that after his death his estate should be managed by his widow *J*, and after her death by his sister-in-law *H*, and after *H*'s death by the appellant, his adopted son *H N*. On *J*'s death, the testator's brother *D*

LETTERS OF ADMINISTRATION —*continued.*

applied for letters of administration, and issued a

alleging that the will was void, on the ground of certain bequests contained in it. They further contended that, as the appellant had been cited to appear when application was made by *D* for letters of administration, he could not now apply to have the letters of administration cancelled. *Held* that the letters of administration granted to *D* should be revoked, and that probate should be granted to the appellant The only citation which had been issued to the appellant was in 1852, when *D* commenced his proceedings to obtain letters of administration. At that time *H*, who was the executrix named in the will

stituted good cause for the revocation of the letters of administration, under s 50 of Act V of 1881. HORMUSJI NAVROJI *v.* BAI DHANBAIJI [I. L. R., 12 Bom., 164

12. ——— *Administration de bonis non—Will relating to self-acquired property—Suit by testator's son—Probate and Ad-*

administered the estate. The son now sued by his next friend to recover arrears of rent which had accrued due on the land, which had been leased to the defendants by the testator *Held* that letters of administration *de bonis non* should have been taken out, and that, since the plaintiff did not represent the estate of the testator, he was not competent to maintain the suit NARASIMMULU *v* GULAM HUSSAIN SAIT [I. L. R., 16 Mad., 71

13. ——— *Deceased having no property or fixed place of abode within district—Jurisdiction of the District Judge—Suc-*

1865). FARDUNJI ASPANDIARJI *v.* NAVAJBAI [I. L. R., 17 Bom., 689

14. ——— *Probate and Administration Act (V of 1881), ss. 23, 41—Power of Court to associate another person with applicant*

power to order, under s 41 of the Act, that another person who has no present interest in the estate should be associated with the applicant in the grant. S. 41 applies to a case where, for some just cause, the person who is legally entitled to letters of administration ought to be superseded, and the grant made to another person. ANNOPURNA DASI *v* KALLAYANI DASI . . I. L. R., 21 Calc., 164

15. ——— *Grant of administration without determining title to property.*—In an application for letters of administration, *held*, on the evidence, that the deceased left property to which administration could be granted without finally determining the title to such property MOHUN PERSHAD NARAIN SINGH *v.* KISHEN KISHORE NARAIN SINGH I. L. R., 21 Calc., 344

16. ——— *Probate and Administration Act (V of 1881), s. 3—Majority Act (IX of 1875), s. 3—Application by person domiciled in State of Bikanir and of age by law of* ... *minority,* ... r person ... " in s. 3 ... of 1881), ... Indian Majority Act, mean any other person not domiciled in British India S. 3 of the Probate and Administration Act therefore fixes the limit of the period of disability for the purpose of the Act, not only for persons domiciled in British India, but for any other persons, whether they be aliens or not Where application was made by a person domiciled in the

applicant not having attained the age of 18 years, the application must be refused IN THE GOODS OF SEWNARAIN MOHATA . I. L. R., 21 Calc., 911

17. ——— *Promissory note given to a firm consisting of two undivided Hindu*

LETTERS OF ADMINISTRATION —*continued.*

administration could not be avoided ; (2) that, if the debt was in reality due to the plaintiffs' family and not to the obligees of the bond, they could not sue upon it in their own right of survivorship without taking out letters of administration, since the promissory note did not disclose the nature of the debt, and, moreover, the other members of the family should have been joined as plaintiffs. *Venkataramanna* v. *Venkayya, I L. R., 14 Mad., 377,* distinguished CHOCKALINGA PILLAI v. NATESA AYYAR . I. L. R., 17 Mad., 147

18. ——————— *Application for letters de bonis non—Contents of petition—Succession Act (X of 1865), s. 269—Powers of administrator.*—In an application for letters of administration *de bonis non,—Held* it is not necessary to ask in the petition for leave to dispose of the property in any particular way S. 269 of the Succession Act gives the administrator full powers in this respect. IN THE GOODS OF HEMMING

[I. L. R., 23 Calc., 579

19. ——————— *Succession Act (X of 1865), s. 190—Dispute as to ownership of property.*—Certain land in dispute belonged originally to a Parsi named *D*, who died intestate After his death, one of his brothers, without taking out

injunction from the Mamlatdar's Court, restraining the plaintiff from obstructing his alleged right of way. Thereupon the plaintiff filed a suit to set aside the Mamlatdar's order, and for a declaration that he was owner of the land, and that defendant had no right of way over it Both the lower Courts rejected the plaintiff's claim on the ground that under s. 190 of the Succession Act (X of 1865) plaintiff *could not establish his right to the land in the* absence of letters of administration to the estate of *D*, the original owner. *Held*, reversing the decrees, that s 190 of Act X of 1865 did not apply Neither the plaintiff nor the defendant relied as the basis of his right on the previous title of *D* There was no question of administration TULJARAM v BAMANJI KHARSEDJI . I L R, 19 Bom., 828

20. ——————— *Letters of ad-*

1881 to accept or renounce her executorship, stated the she was administering the estate, but, having applied for a certificate under Act VII of 1889, did not consider it necessary to take out probate *Held* that

annexed to the sole residuary legatee. MOTIBAI v. KARSANDAS NARAYANDAS

[I. L. R., 19 Bom., 123

21. ——————— *Court of Wards —" Person."*—The Court of Wards is not a "person," and letters of administration cannot under the law be granted to it. GANJESSAR KOER v. COLLECTOR OF PATNA . . . I. L. R., 25 Calc., 795

[2 C. W. N., 349

22. ——————— *Revocation of letters of administration—Omission to cite necessary party—Just cause—Probate and Administration Act (V of 1881), s. 50*—Letters of administration may be revoked on the ground that proper citation were not served, whereby a necessary party was not served with a citation—that being a "just cause" within s. 50 of the Probate and Administration Act. IN THE GOODS OF GUNGA BISSEN MUNDRA

[2 C. W. N., 607

See REBELLS v. REBELLS . 2 C. W. N., 100

23. ——————— *Probate and Administration Act (V of 1881), s 50—Effect of revocation of grant of letters of administration on jurisdiction of District Judge to grant fresh*

OF STATE FOR INDIA . I. L. R., 20 All., 109

24. ——————— *Suit by unsuccessful claimant to letters of administration—Right of suit—Suit to determine right of inheritance or to be appointed shebait of temple.*—Where letters of administration were granted to the defendant, in preference to the plaintiff, the order granting the

25. ——— Limited grant—*Succession Act (X of 1865), s. 190—Hindu Wills Act (XXI*

26. ——————— *Grant to Hindu*

parties (who died after the decree) was declared entitled to a 5-30th share in the joint estate. Subsequently to this decree, several orders were made in the

LETTERS OF ADMINISTRATION—*continued.*

suit, appointing a receiver, ordering partition and excluding certain properties from partition, and directing an account. On partition, a 5-30th share in the properties ordered to be partitioned was allotted and made over to the guardian of the infant children of the sharer who had died, the remainder of the unpartitioned property being in the hands of the receiver. On the taking of the account, it was ascertained that the deceased sharer had during his lifetime over-

belonging to the private estate of such deceased sharer in the hands of the Bank of Bengal, the Court, on an application made for the purpose, directed letters of administration, limited to the Government securities and cash, to issue, considering that the facts of the case warranted a departure from the rule laid down in *In the goods of Ram Chand Seal, I. L. R., 5 Calc., 2.* IN THE GOODS OF SUTTYA KRISHNA GHOSAL

[I. L. R., 10 Calc., 556

27. ———— Grant in respect of immoveable and moveable property—*Estate of deceased Hindu consisting of immoveable and moveable property*.—Except under special circumstances, letters of administration to the estate of a deceased Hindu must be taken out in respect of the immoveable as well as the moveable property forming part of such estate. IN THE GOODS OF GRISH CHUNDER MITTER

[I. L. R., 6 Calc., 483 : 7 C. L. R., 593

28. ———— Lost will—*Administration with will annexed—Succession Act (X of 1865), ss. 208-209—Hindu Wills Act (XXI of 1870), s. 2.*—The fact that a will has been lost is not, if its contents be satisfactorily proved, any bar to obtaining

29. ———— Administrator of estate of deceased Hindu—*Suits brought and attachments issued before grant of letters of administration.*—

LETTERS OF ADMINISTRATION—*continued.*

CHAUND RAMDAYAL *v.* GUMTIBAI GHELLA PEMA *v.* GUMTIBAI . . 8 Bom., O. C., 140

30. ———— Khoja Mahomedan estate

31. ———— *Mahomedan Khoja administrator, Powers of*.—The powers of a Khoja Mahomedan executor or administrator, like those of a Cutchi Mahomedan executor or administrator, seem to be generally limited to recovering debts and securing debtors paying such debts. Where a will gave the executor full powers with regard to

HURIBHOY *v.* VULLEEBHOY CASSUMBHOY

[I. L. R., 6 Bom., 703

See IN THE MATTER OF ISMAIL HAJI ABDULLA

[I. L. R., 6 Bom., 452

32. ———— Joint letters of administration—*Applicant indebted to estate*.—Where there were grounds for believing that one brother was indebted to the estate of a deceased brother, the lower

[1 B. L. R., S. N., 3 : 10 W. R., 90

33. ———— Grant of, to Administrator General—*Administrator General's Act II of 1874—Act XIII of 1875—Rules of High Court,*

the Succession Act). The form of grant should be general and unlimited. IN THE GOODS OF HEWSON

[I. L. R., 4 Calc., 770 : 4 C. L. R., 42

34. ———— Suit by Hindu widow as administratrix of her husband leaving a minor son—*Parties—Manager.*—A Hindu widow,

LETTERS OF ADMINISTRATION —*concluded.*

35. ——— Attorney of executor in

letters of administration with the will annexed, to be granted to *D G L*, the attorney in India of the English executors, the Court, after directing a

tration In the goods of Leckie [15 B. L. R., Ap., 8

36. ——— Security from adminis-

personalty of the deceased. In the goods of Gour Chunder Thakoor 1 Ind. Jur., N. S., 229

LETTERS PATENT, HIGH COURT, 1865.

It was created by the Letters Patent of 1862.

1. ——— cl. 10—*Giving instructions to counsel—Reference from Small Cause Court—*

Court. Moran v. Dewan Ali Sirang [8 B. L. R., 418

——— cl. 12.

See Appeal—Letters Patent, cl. 12. [13 B. L. R., 91 21 W. R., 204

See High Court, Jurisdiction of—Bombay—Civil. [I. L. R., 13 Bom., 302

LETTERS PATENT, HIGH COURT, 1865 —*continued.*

See Cases under Jurisdiction—Causes of Jurisdiction.

See Cases under Jurisdiction—Suits for Land.

See Parsis . I. L. R., 13 Bom., 302

See Practice—Civil Cases—Leave to sue or defend . I. L. R., 3 Calc., 370 [I. L. R., 13 Bom., 404

See Right of Appeal. [I. L. R., 17 Bom., 466

See Statutes, Construction of. [I. L. R., 12 Bom., 507

1. ——— *Jurisdiction of High Court —Cases under R100.*—The High Court, under Letters Patent, 1862, cl. 12, had jurisdiction in all cases where the amount claimed is over R100, whatever may be the amount received. Sikur Chund v. Sooringmull . . . . 1 Hyde, 272

jurisdiction of the Court. Suganchand Shivdas v. Mulchand Jorabimal . . 12 Bom., 113

3. ——— *Whether an order granting leave to sue under this clause may form the subject*

money Mudaliar v. Janakiram Mudaliar [I. L. R., 18 Mad., 142

4. ——— *Addition of a defendant*

High Court, and against whom the cause of action has not arisen wholly within that jurisdiction, leave must be obtained under cl 12 of the Letters Patent, 1865, even if leave was obtained when the suit was originally filed. Rampartab Samrathrai v. Foolibai . . . I. L. R., 20 Bom., 767

5. ——— *Application of restrictive words of cl. 12—Defendant.*—The restrictive words of cl. 12 of the Letters Patent, 1865, apply to the

LETTERS PATENT, HIGH COURT, 1865 —*continued.*

6. ———— *Evidence as to jurisdiction*

Mandalay since January 1894, till the 11th July

alone represented the defendants as carrying on business in Calcutta, and that portion of the plaint

if necessary, amend the plaint by adding a statement that part of the cause of action did arise in Calcutta, does not cause a variance in the original cause of action. It is sufficient to show that the cause of action or part of it arises in Calcutta when the suit comes on for hearing FINK *v.* BULDEO DASS
[I. L. R., 26 Calc., 715

———— cl. 13.

See CASES UNDER TRANSFER OF CIVIL CASE—LETTERS PATENT, HIGH COURT, CL 13.

———— cl. 15.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS 7 B. L. R., 730

1. ———— *Right of appeal—Appeal after new Letters Patent*—Where two Judges decided a case of original civil jurisdiction under the original Letters Patent, but the decree was sealed,

of appeal which existed before its publication in respect of suits then pending, of judgments given, or of decrees made, but not executed. FRAMJI BOMANJI *v.* HORMASJI BARJORJI . 3 Bom., O. C., 49

2. ———— *"Judgment"—"Decree."*—*Per* PEACOCK, *J.*—A judgment under this section means a judgment in the nature of a decree on which

LETTERS PATENT, HIGH COURT, 1865 —*continued.*

3. ———— *"Appeal—"Judgment"—Appealable order—Order granting mandamus.*—*Held* (*per* COUCH, *C.J.*, and MARKBY, *J.*, on appeal), the word "judgment" in cl. 15 of the Letters Patent of 1865 means a "decision," whether final or pre-

See HOWARD *v.* WILSON.
[I. L. R., 4 Calc., 231 : 2 C. L. R., 488

4. ———— *Appeal from decision of a Judge exercising Admiralty or Vice-Admiralty jurisdiction—Practice — Vice-Admiralty Regulations of 1832, rule 35, Application of—Mentioning*

ment of an award for salvage services reserved by the decree making the award, did not preempt an appeal from that decree. IN THE MATTER OF THE SHIP "CHAMPION" . . I. L. R., 17 Calc., 66

5. ———— *Interlocutory order*—*Quære*—Whether an interlocutory order can be made the subject of an appeal. BAMASOONDERY *v.* NILMONEY CHUNDER . . Cor., 5

6. ———— *Appeal from interlocutory order.*—Under cl 15 of the Letters Patent and under the rules of the Bombay High Court, an appeal

7. ———— *Appeal—Judgment—Decision on settlement of issues—Interlocutory order*—*Held* th[illegible]
settlement
upon by
C.J.—The
Letters P.
which decides the case one way or the other in its entirety, and does not mean a decision or order of an interlocutory character which merely decides some isolated point not affecting the merits or result of the entire suit. *Per* MARKBY, *J.*—The matter is one more of convenience and procedure than strict law. EBRAHIM *v.* FUCKHURUNNISA BEGUM
[I. L. R., 4 Calc., 531 : 3 C. L. R., 311

LETTERS PATENT, HIGH COURT, 1865
—*continued.*

8. ———— *Order fixing date of hearing—Civil Procedure Code, s. 156.*—An order made by a Judge of the High Court at settlement of issues fixing a distant date for the hearing of a suit is not an order under s 156 of the Civil Procedure Code and is appealable under Letters Patent, s. 15. R v. R.
[I. L. R., 14 Mad., 88

9. ———— *Appeal—Remand order.*—At the hearing of an appeal before a single Judge of the High Court, the case was remanded to the lower Court fo[illegible] being in [illegible] Court. [illegible] cl. 15 o[illegible]
v. RAMCHUNDER NAG
[I. L. R., 8 Calc., 147 : 9 C. L. R., 461

10. ———— *Civil Procedure Code,* [illegible] *Appeal from one Judge of High Court* [illegible]
that Court, [illegible]
of Civil Procedure, which provides that an order of a Civil Court rejecting an application for review of judgment shall be final. ACHAYA v. RATNAVELU
[I. L. R., 9 Mad., 253

11. ———— *Civil Procedure Code,* [illegible]
[illegible] ion [illegible]
GOPAL . . . . I. L. R., 8 Mad., 147

12. ———— *Appeal from decision of* [illegible] *of civil appellate juris-* [illegible]

13. ———— *Difference of opinion between Judges—Appeal.*—In cases heard by the High Court in its appellate jurisdiction, where the Judges are equally divided in opinion, a party desirous of appealing is bound to appeal under cl 15 of the Letters Patent before he can appeal to the Privy Council. COURT OF WARDS v. LEELANUND SINGH
[14 W. R., 298

14. ———— *Difference of opinion be-* [illegible]

LETTERS PATENT, HIGH COURT, 1865
—*continued.*

upon one or more of the points arising in the appeal. IN THE MATTER OF THE PETITION OF OMRAO BEGUM
[13 W. R., 310

15. ———— *Appeal from an order of* [illegible]

[I. L. R., 22 Bom., [illegible]]

[illegible] judgment. CHAPPAN v. MOIDIN KUTTI
[I. L. R., 22 Mad., 68

17. ———— *Order of single Judge dismissing petition under Civil Procedure Code (Act XIV of 1882), s 622*—No appeal lies under Letters Patent, s. 15, against an order made by a single Judge dismissing an application under s. 622. SHIRAMULU v RAMASAM I. L. R., 22 Mad., 109

18. ———— *Orders transferring case from Agency to District Court—Jurisdiction of High Court to transfer suit pending in the Agent's Court to the District Court—Indian Councils Act (24 & 25 Vict, c. 67), s. 25.*—An order was made by [illegible] transferring [illegible]
of such an Agent to a District Court *Held* that both orders were "judgments" within the meaning of s. 15 of the Letters Patent, and that an appeal lay therefrom. MAHARAJAH OF JEYPORE v. PAPAYYAMMA . . . I. L. R., 23 Mad., 329

19. ———— *Judgment—Appeal—Appealable order—Order rejecting review.*—An order passed by the senior of two Judges of a Division Bench who differed in opinion, dismissing an application for the review of their judgment, is not appealable. Such an order is not a judgment within the meaning of cl. 15 of the Letters Patent. RAKU BIBI v MAHOMED MUSA KHAN
[4 B. L. R., A. C., 10

S. C RUGHOO BIBEE v. NOOR JEHAN BEGUM
[12 W. R., 459

20. ———— *Appeal—Difference of opinion between Judges in review.*—Where two Judges of a Division Bench have concurred in a final decree, the fact that there is a difference of opinion as to one point, amongst others, raised in review on

LETTERS PATENT, HIGH COURT, 1865
—*continued.*

the judgment on which such final decree is based, is no ground for an appeal under cl. 15 of the Letters Patent. IN THE MATTER OF THE PETITION OF HURBUNS SAHAY HURBUNS SAHAY *v* THAKOOR PERSAD

[I. L. R., 10 Calc., 103 : 13 C. L. R., 285

21. ———— *Appealable order—Judgment—Decree—Order passed in suit referred to Commissioner to take accounts.*—The question whether or not an order is appealable is one for the decision of the Court. An order passed in a suit, referring it to the Commissioner to take the accounts between the parties, is a decree. An order passed on a certificate given (under Rule 371 of the Equity Rules of the Supreme Court) by the Commissioner subsequently to the order of reference is appealable *Sonbai v. Ahmedbhai, 9 Bom, 398,* explained. *Justices of the Peace of Calcutta v. Oriental Gas Company, 8 B. L. R., 433,* distinguished. HIRJI JINA *v.* NARRAN MULJI . 12 Bom., 129

22. ———— *Order of Judge in original jurisdiction.*—Under cl. 15 of the Letters Patent, an appeal lies from an order passed by a single Judge in the original civil jurisdiction of the High Court KRISTO KISSOR NEOGHY *v* KADERMOYE DOSSEE

[2 C. L. R., 583

23. ———— *Order allowing commission to Administrator General*—An order passed by a single Judge of the High Court under Act II of 1874, s. 27, allowing to the Administrator General commission at a certain rate, is subject to appeal to the High Court under the 15th clause of the Letters Patent *Justices of the Peace of Calcutta v. Oriental Gas Company, 8 B L R, 433,* and *Sonbai v Ahmedbhai Habibhai, 9 Bom, 398,* distinguished from *DeSouza v. Coles, 3 Mad, 384,* and from the present case. Though such order, being discretionary, would not under ordinary circumstances be interfered

CHETTI *v.* ADMINISTRATOR GENERAL

[I. L. R., 1 Mad., 148

24. ———— *Order refusing to set aside award—Letters Patent, High Court, 1865, cl. 15—Code of Civil Procedure (Act XIV of 1882), ss. 2, 588.*—An order made by a Judge of the High Court in the exercise of original civil jurisdiction refusing to set aside an award is a "judgment" within the meaning of cl. 15 of the Letters Patent of the High Court, and an appeal therefore lies from such an order to the High Court in its appellate jurisdiction. Such an appeal is not restricted by s 588 of the Code of Civil Procedure *Hurrish Chunder Chowdhry v. Kali Sunderi Debi, I. L. R., 9 Calc., 482; L. R, 10 I. A., 4,* referred to. TOOLSEE MONEY DASSEE *v.* SUDEVI DASSEE

[I. L. R., 26 Calc., 361
3 C. W. N., 347

25. ———— *Appeal from decision of Judge in original jurisdiction refusing leave to institute suit under cl 12 of Letters Patent.*—An

26. ———— *Order refusing to stay proceedings—Fresh suit after withdrawal without payment of costs*—An order refusing to stay proceedings where the plaintiff, after being allowed to withdraw a suit with leave to bring another, and the payment of the costs of the former suit has not been made a condition precedent to the bringing of the fresh suit, is an order of an interlocutory character, and is not appealable. CHITTO *v* MUZZUR HOSSAIN

[2 Hyde, 212

27. ———— *Payment—Order refus-*

[I. L. R., 4 Calc, 231 : 2 C. L. R., 483

28. ———— *Order of committal for contempt of Court—Procedure.*—Contempts are in the nature of offences, and therefore, under cl 15 of the Letters Patent, 1865, an appeal lies from an order of committal for contempt. In dealing with

29 ———— *Order on hearing under s. 622, Civil Procedure Code—Judgment—Suit for rent.*—In a suit in a Small Cause Court for rent due in respect of two pieces of land, the Court passed a decree in favour of the plaintiff. The defendant preferred a petition to the High Court under Civil

LETTERS PATENT, HIGH COURT, 1865 —*continued.*

and made an order reversing the decree as to that, and calling for a report of what was due on the other piece of land. The plaintiff preferred an appeal under Letters Patent, s 15. *Held* the abovementioned order was subject to appeal as being a judgment. VANANGAMUDI v. RAMASAMI

[I. L. R., 14 Mad., 406

30. ——————— *Order discharging rule to show cause why minor should not be delivered to claimant—Judgment—Custody of minor—Criminal Procedure Code, 1882, s. 491.*—The petitioner as

IN THE MATTER OF THE PETITION OF JAVERVAHU

[I. L. R., 14 Bom., 555

31. ——————— *Act VI of 1874—Order granting appeal to Privy Council.*—Under cl. 15 of the Letters Patent, no appeal lies to the High Court from an order of the Judge in the Privy Council Department granting a certificate that a case is a fit case for appeal to Her Majesty in Council. MOWLA BUKSH v KISHEN PERTAB SAHI

[I. L. R., 1 Calc., 102

S. C. MOWLA BUKSH v. HODGKINSON

[24 W. R., 150

32. ——————— *Appeal from order of Judge in Privy Council Department—"Judgment," Meaning of.*—No appeal will lie from an order of a Judge granting a certificate that a case is a fit and proper one for appeal to the Privy Council. LUTF ALI KHAN v ASGUR REZA

[I. L. R., 17 Calc., 455

33. ——————— *Appeal from order of*

petitioner's counsel, who had hopes of making a compromise. The attempt at compromise having failed, the petitioner afterwards appealed under cl. 15 of the Letters Patent, when the Judge in the Privy Council Department was referred to, and was not able to deliver any judgment *Held* that, under such circumstances, no appeal lay to the High Court TARA CHAND BISWAS v. RADHA JEEBUN MUSTOFEE

[24 W. R., 148

34. ——————— *Appeal from order of Judge granting certificate of appeal to Privy Council—Act VI of 1874*—When an appeal was made from an order of a Judge of the High Court granting a certificate, under Act VI of 1874, to the effect that the subject-matter of a certain suit was of the

LETTERS PATENT, HIGH COURT, 1865 —*continued.*

value of R10,000, and thus allowing an appeal to the

the High Court from any judgment of a single Judge, an order or certificate of a Judge allowing an appeal to the Privy Council cannot properly be considered a

CHUNDER ACHARJEE v. HURRO SOONDUREE DEBEA

[25 W. R., 529

35. ——————— *Order by Judge of the High Court presiding over the Privy Council Department—Judgment—Certified copy of order of the Privy Council—Civil Procedure Code (Act*

tiff who had not appealed to the Privy Council applied to the High Court for leave to transmit the order to the Court of first instance for execution of the share decreed to him, but, on account of the assignment abovementioned, was unable to produce

was excusable under the circumstances, but refused

dealing with the meaning of decrees of the Privy Council are purely ministerial, and that any order made in such ministerial capacity could not be considered a judgment, and could not therefore be made the subject of an appeal to a Bench of the High Court under cl. 15 of the Charter. *Per*

Judge in the ntion, mean- refore

DABIA v. HURISH CHUNDER CHOWDHRY

[I. L. R., 6 Calc., 594: 7 C. L. R., 543

LETTERS PATENT, HIGH COURT, 1865
—*continued.*

this itself would have been a ground of appeal. HURRISH CHUNDER CHOWDHRY *v.* KALISUNDERI DEBI I. L. R., 9 Calc., 482: 12 C. L. R., 511

36. ——— *Application for leave to appeal to Privy Council—Judgment of one Judge—Ministerial and judicial acts.*—The plaintiff obtained a decree in the Court of first instance On appeal to the High Court, the decision of the lower Court was upheld, but the decree was varied in

effect concurrent judgments, and that no substantial point of law was involved in the case. The defendant appealed under cl. 15 of the Letters Patent *Held* that no appeal would lie *Amirunnissa* v. *Behary Lall, 23 W. R., 529,* followed MANLY *v.* PATTERSON

[I. L. R., 7 Calc, 339: 9 C. L. R, 166

37. ——— *Appeal from order of Judge in Privy Council Department refusing to extend time for furnishing security for costs—*

under cl. 15 of the Letters Patent and is appealable, but not otherwise. KISHEN PERSHAD PANDAY *v.* TILUCKDHARI LALL I. L. R., 18 Calc.,182

38. ——— *Order refusing to stay execution of decree for costs—Civil Procedure Code (Act XIV of 1882), s 608—Security for costs—Costs.*—An order refusing to stay execution in the

39. ——— *Appeal—"Judgment"—Order granting review of judgment—Civil*

LETTERS PATENT, HIGH COURT, 1865
—*continued.*

up before them, when a rule was issued, calling upon the respondents to show cause why a review

Judges sitting alone. *Held* that the order was not a judgment within the meaning of cl 15 of the Letters Patent, and that no appeal would lie therefrom, the order being final under s 629 of the Code of Civil Procedure. *Bombay-Persia Steam Navigation Company* v. *Zuari, I. L R, 12 Bom, 171,* and *Achaya* v *Ratnavelu, I L R., 9 Mad., 253,* approved. AUBHOY CHURN MOHUNT *v.* SHAMANT LOCHUN MOHUNT

[I. L. R., 16 Calc., 788

40. ——— *Appeal—Provincial Small Cause Courts Act (IX of 1887), ss 25 and 27—Order of Judge of High Court acting under rules of Court under s 13 of the Charter Act (24 & 25 Vict, c. 104)* —A petition for revision preferred under the Provincial Small Cause Courts Act, s 25, was heard and dismissed by one of the Judges of the High Court acting under the rules of Court framed under s 13 of the Charter Act

41. ——— *Order of Criminal Court*

PRESS . . . . I. L. R., 17 Mad., 105

42. ——— *Order of Judge of High Court on application for re-admission of an appeal dismissed on failure to deposit costs of paper-book.*

book in an appeal from an original decree. RAMHARI SAHU *v.* MADAN MOHAN MITTER

[I. L. R., 23 Calc., 339

43. ——— *Order on application under Probate and Administration Act (V of 1881), s. 90*

LETTERS PATENT, HIGH COURT, 1865—*continued.*

—An order on an application under s 90 of the Probate and Administration Act, at the instance of a beneficiary, where there was no restriction on the power of the executor to sell, is without jurisdiction, and appealable under cl. 15 of the Letters Patent. *Hurrish Chunder Chowdhry v. Kali Sundari Debi, I. L. R., 9 Calc., 482,* applied IN THE GOODS OF INDRA CHANDRA SINGH. SARASWATI DASI *v.* ADMINISTRATOR GENERAL OF BENGAL [I. L. R., 23 Calc., 580

See FATEMUNNISSA *v.* DEOKI PERSHAD [I. L. R., 24 Calc., 350

IKBAL HOSSAIN *v.* DEOKI PROSHAD [1 C. W. N., 21

44. ———— *Order of Judge of High Court on appeal against order of remand—Civil Procedure Code (1882), s. 588, cl. 28* —There is no appeal under the Letters Patent, cl. 15, against an order of a single Judge passed under the Civil Procedure Code, s. 588, cl. 28. VENGANAYYAN *v.* RAMASAMI AYYAN . I. L. R., 19 Mad., 422

45. ———— *Civil Procedure Code (1882), s. 588—Powers of Judge of High Court—*

merely remanding the suit to the lower Appellate Court No appeal lies against such decree under the Letters Patent, cl 15 SANKARAN *v.* RAMAN KUTTI [I. L. R., 20 Mad., 152

46. ———— *Order of Judge of High Court dismissing appeal from order remanding*

and Sankaran v. Raman Kutti, I L. R., 20 Mad., 152, followed. VASUDEVA UPADYAYA *v.* VISVARAJA THIRTHASAMI [I. L. R., 20 Mad., 407

47. ———— *Order refusing applica-*

[I. L. R., 25 Calc., 236

48. ———— *Appeal from order of refusal to send for records—Dismissal on ground that no appeal lies.*—An order refusing to send for the record on a petition filed under s. 25 of the Provincial Small Cause Courts Act, 1887, is not a judgment, and no appeal lies therefrom. VENKATARAMA AYYAR *v.* MADALAI AMMAL [I. L. R., 23 Mad., 169

GURAPPA *v.* VENKATANARASIMHA BHUPALA BHALLEROW . I. L. R., 23 Mad., 170 note

49. ———— *Civil Procedure Code, 1882, s. 575—Right of appeal.*—S. 575 of Act XIV of 1882 does not take away the right of appeal which is given by cl. 15 of the Letters Patent. When the judgment of a lower Court has been confirmed under s. 575 of the Code of Civil Procedure, by reason of one of the Judges of the Appeal Court agreeing upon the facts with the Court below, an appeal will lie against such judgment, notwithstanding the terms of s. 575. GOSSAMI SRI 108 SRI GRIDHARIJI MAHARAJ TICKAIT *v.* PURUSHOTUM GOSSAMI . . I. L. R., 10 Calc., 814

50. ———— *Time for preferring appeal.*—An appeal under s. 15 of the Letters Patent from the judgment of a Division Bench of the High Court must be preferred within thirty days from the date of the judgment, unless good cause be shown to the contrary. IN THE MATTER OF HURRUCK SINGH . . . 11 W. R., 107

51. ———— *Filing petition of appeal—Practice.*—*Per* PEACOCK, *C.J.*, and KEMP and MACPHERSON, *JJ.*—A petition of appeal under cl. 15 of the Letters Patent, from a decision of an Appellate Division Bench, may be presented within thirty days from the time when the written judgments of the Division Bench are put in. The difference of practice on the original and appellate jurisdictions of the High Court contrasted. HARRAK SING *v.* TULSI RAM SAHU 5 B. L. R., 47

S. C. HURUCK SINGH *v.* TOOLSEE RAM SAHOO [12 W. R., 458

52. ———— *Arguments on appeal—Practice.*—On appeal under cl. 15 of the Letters Patent, no other points may be argued than those which were argued before the Division Bench. HAJRA BEGUM *v.* KHAJA HOSSEIN ALI KHAN [4 B. L. R., A. C., 88

HIRANATH KOER *v.* RAM NARAYAN SINGH [9 B. L. R., 274 ; 17 W. R., 318

53. ———— *Civil Procedure Code, s. 257—Act XXIII of 1861, s. 23—Arguments on appeal—Practice.*—Cls 15 and 36 of

when the Judges of a Division Court are equally

LETTERS PATENT, HIGH COURT, 1865 —*continued.*

Division Court, will be "final" In appeal under cl. 15 of the Letters Patent, 1865, no point can be

—— cl. 16.

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT—CIVIL CASES [7 W. R., 430

—— *Power of High Court to hear*

—— cl. 17.

—— cl. 18.

See CASES UNDER INSOLVENT ACT, s. 5

—— cl. 19.

See CONTRACT ACT, s 27 14 B. L. R., 76

—— cl. 24 (Bombay).

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL [I L. R, 9 Bom., 288

—— cl. 25.

See CONFESSION—CONFESSIONS TO POLICE OFFICERS . I. L. R., 2 Bom., 61

—— cl. 26

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES. [2 Bom., 112: 2nd Ed, 106

See CHARGE TO JURY—MISDIRECTION [I. L. R., 10 Calc., 1079 I L R, 17 Calc., 642

See MERCHANT SHIPPING ACT, s. 267. [I. L. R., 16 Calc, 238

—— Case certified by Advocate General under—

See CONFESSION—CONFESSIONS TO POLICE OFFICERS . I. L. R., 1 Calc., 207 [I. L. R, 2 Bom., 61

1. —— *Prisoner sentenced by Sessions Judge to rigorous, for an offence punishable only with simple, imprisonment.*—Where the Judge at Sessions sentenced a prisoner to rigorous imprisonment for a crime punishable only with simple imprisonment,—*Held* that this was an error which might be reviewed on the Advocate General's certificate under the Charter of 1865, s. 26. REG v. YED ALI KHAN . 1 Ind. Jur., N. S., 424

LETTERS PATENT, HIGH COURT, 1865 —*continued.*

2. —— *Charge under s 467, Penal Code—Felony or misdemeanour—Separation of jury.*—Where the Judge, on a charge under s 467 of the Penal Code, permitted the jury to separate on the first day of the trial and before verdict,—*Held* that the exercise of his discretion was

[3 Bom., Cr., 20

3. —— *Power of High Court where*

head of charge is bad, has power to review the whole case, and, if it appears that the evidence improperly admitted could not reasonably be supposed to have influenced the jury as to the latter head of charge, ought not to set aside the conviction on that head of charge, but should proceed to pass judgment and sentence on it. *Semble*—S. 167 of the Evidence Act applies to criminal trials by jury in the High Court. REG. v. NAVROJI DADABHAI . 9 Bom., 358

4. —— *Evidence Act (I of 1872), s 167*—S 167 of the Evidence Act applies to cases heard by the High Court when exercising its powers under cl 26 of the Letters Patent QUEEN-EMPRESS v McGUIRE . . 4 C. W N, 433

5. —— *Reserving point of law for High Court—Refusal to reserve—Discretion of Judge—Review—Non-direction—Certificate of Advocate General.*—The statement of a Judge who presides at a criminal trial is, upon a case reserved under the 25th clause of the Charter of the High Court, or upon a case certified by the Advocate

which the Advocate General should grant a certificate under cl. 26 of the Letters Patent. REG. v. PESTANJI DINSHA . . . 10 Bom., 75

—— cl. 28.

See HIGH COURT, JURISDICTION OF—CALCUTTA—CRIMINAL. [I. L. R., 26 Calc., 746 3 C. W. N., 598

LETTERS PATENT, HIGH COURT, 1865 —*continued.*

See HIGH COURT, JURISDICTION OF—MADRAS—CRIMINAL.
[I. L. R., 14 Mad., 121

——— cl. 29.

See CASES UNDER TRANSFER OF CRIMINAL CASE—LETTERS PATENT, HIGH COURT, CL. 29.

——— cl. 36.

See APPEAL IN CRIMINAL CASES—PROCEDURE
[2 B. L. R., F. B., 25 : 10 W. R., Cr., 45

1. ——— *Division Bench of two Judges differing in opinion—Practice of Privy Council.*—A cause was heard before a single Judge of the High C
the suit.
its appella
Court was
holding th
the Puisn
under the 36th section of the Letters Patent of 1865 creating the High Court a decree of reversal was ordered. On appeal, the Judicial Committee, without expressing any opinion whether the 36th section was applicable, having regard to the 26th Rule of the High Court, directed the appeal to be heard on the merits. MILLER *v.* BARLOW
[14 Moore's I. A., 209

2. ——— *Civil Procedure Code, 1877, ss. 575 and 647.*—The provision of the Letters Patent of 1865, s 36, that when the Judges of a Division Bench are equally divided in opinion, the

3. ——— — *Criminal Procedure Code,*

the provisions of cl. 36 of the Letters Patent, 1865. QUEEN-EMPRESS *v* DADA ANA
[I. L. R., 15 Bom., 452

——— cl. 37—*Discretion as to costs in civil suits.*—The 37th clause of the Letters Patent constituting the High Court does not give the Court an uncontrolled discretion as to costs in civil suits. SUBAPATI MUDALIYAR *v.* NARAYANSVAMI MUDALIYAR . . . . . . 1 Mad., 115

LETTERS PATENT, HIGH COURT, 1865 —*concluded.*

——— cl. 39.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . 1 B. L. R., F. B., 1
[7 B. L. R., 730
13 B. L. R., 103
I. L. R., 1 Calc., 431
1 W. R., Mis., 13
5 W. R., Mis., 17
I. L. R., 22 Calc., 928

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL . 19 W. R., 191

——— cl. 40.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . . 9 Bom., 398
[I. L. R., 22 Calc., 928

——— cl. 41.

See APPEAL TO PRIVY COUNCIL—CRIMINAL CASES . . . 7 Bom., Cr., 77

——— cl. 42.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . 1 B. L. R., F. B., 1

LETTERS PATENT, HIGH COURT, N.-W. P.

——— cl. 2.

See HIGH COURT, CONSTITUTION OF.
[I. L. R., 9 All., 675

——— cls. 7 and 8.

See ADVOCATE . I. L. R., 9 All., 617

——— cl. 8.

See PLEADER—REMOVAL, SUSPENSION, AND DISMISSAL . I. L. R., 17 All., 498
[L. R., 22 I. A., 193

——— *Appeal—Presentation of appeal by a person other than an advocate, vakil, or attorney of the Court, or a suitor.*—*Held* that the presentation of an appeal by a person who was not an advocate, vakil, or attorney of the Court, nor a suitor, is not a valid presentation in law, having regard to s. 8 of the Letters Patent of the High Court. SHIAM KARAN *v.* RAGHUNANDAN PRASAD
[I. L. R., 22 All., 331

——— cl. 10.

See COURT FEES ACT, 1870, SCH. I, ART. 5.
[I. L. R., 11 All., 176

See LIMITATION ACT, 1877, s. 12.
[I. L. R., 2 All., 192

See REMAND—PROCEDURE ON REMAND.
[I. L. R., 16 All., 306

LETTERS PATENT, HIGH COURT, N.-W. P.—*continued*

See Review—Ground for Review.
[I. L. R., 11 All., 176

See Rules of High Court, N.-W. P.
[I. L. R., 9 All., 115

1. ——————— *Appeal from judgment of Division Court.*—To allow of an appeal to the High Court against the judgment of a Division Court, under the provisions of cl. 10 of its Letters Patent, there must be such a judgment on the part of all the Judges who may compose the Division Court as disposes of the suit on appeal before it. Ghasi Ram v. Nuraj Begam . I. L. R., 1 All., 31

2. ——————— *Appeal from single Judge —"Judgment"—Interlocutory order—Order refusing leave to appeal in formâ pauperis—Civil Procedure Code, ss. 588, 591, 632.*—Under ss 588

appeal *in formâ pauperis Achaya* v *Ratnavelu,*

3. ——————— *Order of a single Judge of the High Court amending an appellate decree—Appeal from such order—Civil Procedure Code, ss 206, 582, 632.*—Whether an order made by a single Judge of the High Court, directing the amendment of a decree passed in appeal by a Division Bench of which he had been a member, is an order made under s 206 read with ss. 582 and 632 of the

and from such order no appeal under s. 10 of the Letters Patent will lie. *Hurrish Chunder Chowdhry* v. *Kali Sunderi Debia, I L R., 9 Calc, 482 L. R., 10 I. A, 4,* discussed Muhammad Naim-ullah Khan v. Ihsan-ullah Khan
[I. L. R., 14 All, 226

4. ——————— *Civil Procedure Code, ss. 556, 558, and 588, cl 27—Dismissal of appeal for default.*—No appeal under s. 10 of the Letters Patent will lie from an order under s 556 of the Code of Civil Procedure dismissing an appeal for default, the appellant not having had recourse to the procedure provided by s 558 of the said Code Pohkar Singh v. Gopal Singh
[I. L. R., 14 All., 361

5. ——————— *Civil Procedure Code, ss. 2, 556, 558, 587, 588, 632—Appeal—Dismissal of appeal for default—"Order"—"Decree."*—No appeal will lie under s. 10 of the Letters Patent from the order of a single Judge of the High Court dismissing an appeal for default. The decision of a Court dismissing a suit or an appeal for default is an "order" and not a "decree" *Nand Ram* v.

6. ——————— *Order of Judge on revision —Provisional Small Cause Court Act (IX of 1887), s. 25.*—No appeal will lie under s. 10 of the Letters Patent from an order of a single Judge of the High Court in revision under s 25 of Act IX of 1887. *Muhammad Naim-ullah Khan* v. *Ihsan-ullah Khan, I L R, 14 All., 226,* referred to. Gauri Datt v Parsotam Das . . I. L. R., 15 All., 373

7. ——————— *Difference of opinion between Judges of Division Bench.*—*Held* (Spankie, J., dissenting) that the appeal given to the Full Court under cl 10, Letters Patent, is not confined to the point on which the Judges of the Division Court differ. Ram Dial v. Ram Das
[I. L. R, 1 All., 181

8. ——————— *Difference of opinion in*

that sufficient cause for an extension of time had been shown, and that the appeal should be deter-

appeal under s 10 was not premature Husaini Begam v. Collector of Mozaffarnagar
[I. L. R., 9 All., 655

9. ——————— *Order under Civil Procedure Code (1882), s. 312—Civil Procedure Code (1882), ss. 256 and 588—Assignment of villages to Hindu widow in lieu of maintenance—Attachment and sale of such villages in execution of money decree—Objection by widow after sale allowed—Appeal from order allowing objection.*—Certain villages were assigned for her maintenance to a Hindu widow by members of her husband's family These villages were subsequently attached and sold in execution of a simple money decree against the widow. After the sale had become final, the widow came forward with an objection to the attachment and sale of the assigned villages on the ground that

LETTERS PATENT, HIGH COURT, N.-W. P.—*continued.*

order asked for by the widow's application was practically an order under s. 312 of the Code of Civil Procedure, an appeal under cl. 10 of the Letters Patent would not lie. BANSIDHAR *v.* GULAB KUAR [I. L. R., 16 All., 443

10. ——————— *Order refusing extension of time for serving notice of appeal—Application under Companies Act (VI of 1882), s. 169—Discretion of Court—Judgment.*—No appeal will lie under s. 10 of the Letters Patent of the High Court of Judicature for the N.-W. P. from an order of a single Judge of the Court refusing an application under s. 169 of Act VI of 1882 (Indian Companies Act) for extension of time for serving notice of an appeal under that Act; such order not being a judgment within the meaning of cl. 10 of the Letters Patent. *Banno Bibi* v. *Mehdi Husain, I. L. R., 11 All., 375; Muhammad Naimullah Khan* v. *Ihsanullah Khan, I. L. R., 14 All., 226; Kishen Pershad Panday* v. *Tiluckdhari Lal, I. L. R., 18 Calc., 183, Lutf Ali Khan* v. *Asgur Reza, I. L. R., 17 Calc., 455, Hurrish Chunder Chowdry* v. *Kali Sunderi Debia, I. L. R., 9 Calc., 482 L. R., 10 I. A., 4, Mohabir Prosad Singh* v. *Adhikari Kunwar, I. L. R., 21 Calc., 473, Lane* v. *Esdaile, L. R. (1891), Ap. Cas. 10, Kay* v. *Briggs, L. R., 22* ... *S., 18*...
Q. B.
HOWAR...

11. ——————— *Order granting probate—Probate and Administration Act (V of 1881), ss. 51-87—"Decree"—Civil Procedure Code (1882), ss. 2 and 591—Appeal—Finding of fact, Power of Appellate Court as to.*—An appeal will lie under cl. 10 of the Letters Patent of the High Court of Judicature for the N.-W. P. from the judgment of a single Judge of the Court in appeal from an order of a District Judge granting probate of a will under Ch. V of Act V of 1881, and the Bench hearing such an appeal under cl. 10 of the Letters Patent is not debarred from reconsidering the findings of fact arrived at in the judgment under appeal. UMRAO CHAND *v.* BINDRABAN CHAND [I. L. R., 17 All., 475

12. ——————— *Arguments in appeal—Points on which appellant may be heard—Practice.*—In appeals under the Letters Patent, s. 10, an appellant is not entitled to be heard on points which he has not raised before the Judge against whose decree he is appealing. BRIJ BHUKHAN *v.* DURGA DAT . . I. L. R., 20 All., 258

13. ——————— *Plaint disclosing no cause of action—Discovery at the stage of an appeal under the Letters Patent of defect in the plaint—Dismissal of suit.*—Where in an appeal under s. 10 of the Letters Patent it was brought to the notice of the Court that the plaint in the suit disclosed no ...

——————— cl. 12—*Lunatic—Native of India—Act XXXV of 1858, s. 23—Original jurisdiction of High Court in respect of the persons and estates of lunatics who are natives of India.*—The High Court has not, under cl. 12 of its Charter, any original jurisdiction in respect of the persons and estates of lunatics who are natives of India. IN THE MATTER OF THE PETITION OF JAUNDHA KUAR [I. L. R., 4 All., 159

——————— cls. 18 and 19.

See REVIEW—CRIMINAL CASES. [I. L. R., 7 All., 672

——————— cl. 27.

See REFERENCE FROM SUDDER COURT, AGRA . . . 6 B. L. R., 283 [13 Moore's I. A., 585

1. ——————— *24 & 25 Vict., c. 104, s. 13—Difference of opinion between Judges of Division Bench.*—S. 13 of Act 24 & 25 Vict., c. 104, and s. 27 of the Letters Patent of the High Court, ...

Judge must prevail, and the order must issue in accordance with his judgment, a reference to a third ...

2. ——————— *Practice — Difference of opinion on Division Bench regarding preliminary objection as to limitation—Civil Procedure Code, s. 575.*—S. 27 of the Letters Patent for the High Court of the N.-W. P. has been superseded in those cases only to which s. 575 of the Civil Procedure Code properly and without straining language applies. There are many cases to which s. 575, even with the aid of s. 647, does not apply, and to these s. 27 of the Letters Patent is still applicable. One of the cases to which s. 575 of the Code does not apply is where a preliminary objection being taken to the hearing of ...

preliminary objection is allowed, it cannot be said ...

difference of opinion (the Bench being equally divided), the opinion of the senior Judge should, under s. 27 of the Letters Patent, prevail. *Appaji*

LETTERS PATENT, HIGH COURT, N.-W. P.—*concluded.*

Bhicrac v. *Shitlal Khubchand, I. L. R., 3 Bom., 204,* and *Gridharji Maharaja Takait* v. *Purushotum Gossami, I. L. R., 10 Calc., 814,* distinguished. HUSAINI BEGAM v. COLLECTOR OF MOZAFFARNAGAR [I. L. R., 11 All., 176

———— cl. 31.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . I. L. R., 1 All., 726

LEX FORI.

See LIMITATION—LAW OF LIMITATION. [5 Moore's I. A., 234

See RIGHT OF SUIT — CONTRACTS AND AGREEMENTS I. L. R., 17 Mad., 262

LIBEL.

See CASES UNDER DEFAMATION

See PRIVILEGED COMMUNICATION. [I. L. R., 12 Mad., 374

———— Restraining publication of—

See INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTORY POWERS. [I. L. R., 1 Bom., 132

1. ———— Comments on acts of public men—*Newspapers—Privilege.*—Every subject has

an action if the comments are made honestly, and he honestly believes the facts to be as he states them HOWARD v. NICOLL . . 1 Bom., Ap., 65

2. ———— Defamatory communications by Consul to his Government—*Privileged*

[1 Ind. Jur., N. S., 102

3. ———— Privileged communication—*Malicious prosecution—Reasonable and probable cause.*—*L M*, an inspector of the *O G Co*, on visiting the company's works at *N*, was informed that the superintendent, *W M*, had misappropriated the company's money, and obtained money wrongfully

LIBEL—*continued.*

from their workmen, and otherwise mismanaged the factory. On further enquiry and inspection of *W M*'s books, his suspicions being confirmed, he communicated them by letter to the resident director. The company having declined to prosecute, *L M* pre-

was no proof that the defendant was actuated by malice *Held*, dismissing the suit with costs, that a communication such as the above is a "privileged communication" that when an overseer has reasonable

B., O C, 18

4. ———— *Statements made*

5. ———— Publication—*Privilege—Bom Act I of 1873—Practice—Costs.*—The Trus-

the Trustees, were recorded in two books kept in the

LIBEL—*continued.*

to a libel; second, that the act of the Trustees, in transmitting a copy to the Secretary to the Local Government, was a publication of the libel; third, that such publication was privileged. *Quære*—Whether the giving of the resolution to be copied by clerks of the defendants was a publication; but if it were,—*Held* that such a publication was also privileged. *Semble*—That had the defendants succeeded

must pay the costs of the suit. SHEPHERD *v.* TRUSTEES OF THE PORT OF BOMBAY

[I. L. R., 1 Bom., 477

6. ——— *Letter given by manager of firm to clerk to copy—Reflections on professional man.*—Defamatory matter is privileged only when written *bonâ fide* and shown to a third party to give information which the third party ought to have A letter was written by order of the manager of a firm reflecting upon the character of a professional man, and signed by the manager and handed over in the ordinary way to a clerk in the

7. ——— *A* brought an action against *B* for damages for defamation of character The alleged libel was contained in a letter written and sent as an ordinary private letter by post by *B*

proved, and t

A's feelings

missed. KAM

GHOSE 1

MAHOMED ISMIL KHAN *v.* MAHOMED JAHIR *alias* MOTEE MEAN . . . . 6 N. W., 38

8

statement in the pleadings or during the conduct of a suit against a party or witness in it. The plaintiff claimed to recover damages from the defendants for publishing defamatory matter in an application they had filed in a suit brought against them by one *M*, in which the plaintiff was described by the defendants as a person "whose occupation it was to obtain his living by getting up such fraudulent actions," and that he was induced to make a false claim by the plaintiff. The application appeared to have been made with the object of having other persons made parties to that suit. *Held* that the

LIBEL—*continued.*

11 B. L. R., 321, followed. NATHJI MULESHVAR *v.* LALBHAI RAVIDAT. LALBHAI RAVIDAT *v.* NATHJI MULESHVAR . I. L. R., 14 Bom., 97

I. L. R., 14 Bom., 97, dissented from. AUGADA RAM SHAHA *v.* NEMAI CHAND SHAHA

[I. L. R., 23 Calc., 867

10. ——— **Defamatory statement made by one newspaper copied into another and commented upon as untrue**—*Retention of libel—Malice.*—A certain newspaper called the *Rajya Bhakta* published a false and defamatory statement of the plaintiff. More than a month afterwards the defendants published an article in their newspaper, th

the statement

peating it. T

said statemer

out that the defendants were the first to raise an

statement in the *Rajya Bhakta*, as that paper was

MURZBAN . . . I. L. R., 14 Bom., 552

11. ——— **Proof of injury to plaintiff**—*Loss of caste—Malice.*—Suit for libel in describing the plaintiff, who was a Jounpore bunniah, as a Telee whereby the plaintiff lost his caste, etc. The alleged libel was contained in an answer to a suit. *Held*

12. ——— **Rejection of plaint**—*Ironical publication.*—On the presentation of a plaint for libel, the Court must see whether the

plaintiff cannot, by alleging that they were printed and published by the defendant with the intent to

LIBEL—*concluded.*

injure the plaintiff, and bring him into public scandal and disgrace, and to expose him to public scorn and ridicule, and to cause it to be suspected that the plaintiff was a dishonest person, and had been actu- [illegible]

[illegible]

LIBERTY TO APPLY.

See DECREE—ALTERATION OR AMENDMENT OF DECREE.
[I. L. R., 15 Calc., 211

LICENSE.

———— Breach of conditions of—

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY.
[I. L. R., 10 All., 577
I. L. R., 12 Bom., 422

———— *Date of taking out*—

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 335.
[I. L. R., 24 Calc., 360

———— False statement in application for—

See BENGAL MUNICIPAL ACT, 1884, s. 133.
[I. L. R., 22 Calc., 131

———— for building.

See MADRAS DISTRICT MUNICIPALITIES ACT, 1884, s. 180.
[I. L. R., 16 Mad., 230

———— Necessity for—

See POLICE ACT (XLVIII OF 1860), s. 11.
[I. L. R., 15 Bom., 530

———— Obligation to grant—

See BENGAL MUNICIPAL ACT, 1884, s. 339
[I. L. R., 17 Calc., 329

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.
[I. L. R., 17 Calc., 329
I. L. R., 21 All., 348

———— Power to grant or refuse—

See BENGAL MUNICIPAL ACT, 1884, s. 337.
[I. L. R., 20 Calc., 654

———— to accommodate pilgrims.

See N.-W. P. AND OUDH LODGING HOUSE ACT . . I. L. R., 20 All., 534

———— to keep animals.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 307 . I. L. R., 25 Calc., 625

LICENSE—*continued.*

———— to practise as a pleader, Withdrawal of—

See RECORDER'S ACT, s. 17
[6 B. L. R., 180

———— to quarry.

See CONTRACT—CONSTRUCTION OF CONTRACTS . I. L. R., 13 Bom., 630

———— to sell liquor.

See BENGAL EXCISE ACT XXI OF 1856
[8 W. R., Cr., 4
16 W. R., Cr., 69
19 W. R., Cr., 34
25 W. R., Cr., 42

See EXCISE ACT
[I. L. R., 1 All., 630, 635, 638

See MANDAMUS . 11 B. L. R., 250

———— to sell opium.

See OPIUM ACT 13 C. L. R., 336
[I. L. R., 13 Mad., 191
I. L. R., 26 Calc., 571

———— to use land of another.

See USER, RIGHT OF.
[I. L. R., 16 Calc., 640

1. ———— Document giving permission to capture elephants—*Easements Act (V of 1882), ss. 52, 56*—*Easement.*—The owner of a forest, in 1883, executed an instrument whereby he gave to the other party thereto permission to trap fifty elephants in the forest, and stipulated for a certain payment in respect of each elephant which was captured. In 1884, without the knowledge of the owner of the forest, the other party, by a similar instrument, gave permission to the defendant to trap ten elephants. The instrument of 1883 was expressed to be in force for six years, that of 1884 for four years. The latter instrument was not ratified by the owner of the forest, who, in 1885, granted the exclusive right of trapping elephants to the plaintiff. The plaintiff now sued the defendant for possession of two elephants which had been captured by him. *Held* that the instrument of 1883 was a license merely, and that since the owner of the forest had never consented to or ratified the instrument of 1884, the plaintiff was entitled to a decree. RAMAKRISHNA *v.* UNNI CHECK
[I. L. R., 16 Mad., 280

2. ———— Right of growing rice plants [illegible]

[illegible]

with the ownership of any land, but creates only a *personal right or obligation.* *License rights* are not generally transferable, and the transferee is not bound to continue the license granted by the former owner, while easements once established follow the property. The plaintiff claimed and proved a prescriptive right of using a certain land

LICENSE—*concluded.*

belonging to the defendant's mortgagor for a certain part of the year for raising rice plants to be after-

nature of profits *a prendre.* SUNDRABAI *v.* JAYAWANT . . . I. L. R., 23 Bom., 397

LICENSEE.

See PATENT . I. L. R., 15 Calc., 244

LIEN.

See BAILMENT . I. L. R., 6 All., 139

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY . 14 B. L. R., 155
[I. L. R., 9 Calc., 377
I. L. R., 14 Calc., 809
I. L. R., 11 Bom., 313
I. L. R., 16 Calc., 323
I. L. R., 22 Calc., 800
I. L. R., 14 All., 273

See CASES UNDER DEPOSIT OF TITLE-DEEDS.

See CASES UNDER MORTGAGE—MONEY-DECREES ON MORTGAGES.

See CASES UNDER VENDOR AND PURCHASER—LIEN

———— by custom for price of seed.

See INDIGO FACTORY.
[I. L. R., 3 Calc., 231

———— Enforcing or removing—

See CASES UNDER DECLARATORY DECREE, SUIT FOR—ENFORCING OR REMOVING LIEN OR ATTACHMENT.

———— for disbursements.

See BOTTOMRY BOND 6 B. L. R., 323

———— for master's wages.

See BOTTOMRY BOND . 5 B. L. R., 258

———— for unpaid purchase-money.

See CASES UNDER VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.

———— of Attorney for costs.

See ATTORNEY AND CLIENT.
[10 B. L. R., 444
15 B. L. R., Ap., 15
I. L. R., 6 Calc., 1
I. L. R., 4 Bom., 353
I. L. R., 16 Calc., 374

See CASES UNDER COSTS—SPECIAL CASES—ATTORNEY AND CLIENT.

LIEN—*continued.*

———— of banker.

See BANKERS . I. L. R., 19 Mad., 234

1. ———— Creation of lien—*Agreement for specific appropriation—Possession.*—To constitute a lien on any property, there must be a clear agreement for the specific appropriation of the property; and, further, the property must be in the possession of the party who claims the lien. IN RE THE CLAIM OF DADIA BIBEE. DEBNARAIN BOSE *v.* LEISK
[2 Hyde, 267

2. ———— *Contract between Hindus—Deposit of title-deeds.*—A lien created by verbal contract and deposit of title-deeds of immoveable property in the Island of Bombay by a Hindu in favour of a Hindu upheld. JIVANDAS KESHAVJI *v.* FRAMJI NANABHAI . . 7 Bom., O. C., 45

3. ———— *Deposit of shares for special purpose.*—Where certain shares were deposited with a bank as security for the depositor overdrawing his account for a time, which, in fact, he never did, and other documents were deposited as ... right & ...uments ... —*Held* ...pect of the cotton transactions. GENTLE *v.* BANK OF HINDOSTAN, CHINA, AND JAPAN
[1 Ind. Jur., N. S., 245

4. ———— Existence of lien—*Deposit of shares with power of sale—Unjustifiable revocation of power—Effect of, on right of lien.*—The defendant, being largely indebted to the plaintiff company, had, from time to time prior to the 22nd November 1865, deposited with them certain shares and share certificates in various joint-stock companies as security for the repayment (as alleged by the plaintiffs) of all moneys due or which might hereafter become due from time to time to them for principal and interest, and had executed several powers of sale and transfers and letters of pledge in favour of the plaintiffs. On the 22nd November 1865, the defendant executed a power of attorney authorizing the plaintiffs to sell or dispose of the said shares and gave them a promissory note for R1,90,000 with interest at 11 per cent. per annum. Between the 22nd November and 2nd January 1866, the plaintiffs caused their right of lien over the said shares to be registered by the various joint-stock companies concerned. On the 1st February 1866, the defendant,

of the debt, and for a declaration of their right of lien and power of sale over the shares pledged with them by the defendant, and for an order for a sale of

LIEN—*continued.*

the shares sufficient to pay off the debt,—*Held* that the original debt continued to exist; that the first promissory note and the shares were given as a security for that loan; that the second promissory note

power-of-attorney, the act of the defendant in trying to prevent such exercise of power by revoking the power-of-attorney, being unjustifiable, and that therefore the plaintiffs were entitled to have the power declared valid and subsisting and generally to have the relief they asked for. STEWART *v.* DELHI AND LONDON BANK . . . 17 W. R., 201

5. ——— *Lien of letter of boats on goods placed in the boat.*—The mere letter of boats for hire has not a lien for his hire upon goods which may be placed in the boats, and should he cause loss to the owner of the goods by wrongfully opposing their removal, he will be liable for the same. GOBIND PERSHAD *v.* RUDDELL [5 N. W., 160

6. ——— *Entire contract—Wharfinger's lien—Contract Act (IX of 1872), ss 170, 171.*—Where a person does work under an entire contract with reference to goods delivered

upon which he receives goods brought to him by customers, does not entitle him to claim a lien as a wharfinger upon such goods. MILLER *v.* NASMYTH'S PATENT PRESS COMPANY I. L. R., 8 Calc., 312

7. ——— *Charge created by tenant, Duration of.*—A charge on premises created by a tenant can only be a valid charge so long as his right and interest in the property continues. It must cease with the cessation of such right and interest. ZALIM SINGH *v.* BISHESUR KANDU [7 N. W., 181

8. ——— *Tamzas or reve-*

although the tamzas are unendorsed. KO KYWETNEE *v.* KO KOUNG BANE . . 5 W. R., 189

9. ——— *Lien on exchanged property.*—Where *A* mortgaged to *B* certain pro-

PURSOO RAM *v.* BYJNATH LALL . 10 W. R., 475

10. ——— *Agreement not to alienate—Suit to set aside patni lease.*—*R*, as mortgagee, sued the *Ds* for possession after foreclosure. A razinamah and safinamah were put in and a decree passed thereon under which the *Ds* and others as principals, and their co-sharers as sureties, bound themselves not to alienate any portion of their property in the estate till the debt was satisfied, and that on failure the decree should be executed, the shares of the principals being sold first. After this, the co-sharers granted a patni of a portion of the estate to the defendants in this suit. Subsequently the rights of the *Ds* were sold in execution to *B*, who again sold them to plaintiffs, who had previously acquired twelve annas of the right and interest of *R*, under the razinamah and safinamah and decree, the remaining four annas having passed to *G*, now represented by defendant *K*. The present suit was

under the patni lease and to hold possession until their claim was satisfied. DHUNKRISHTO SEIN *v.* ERSKINE & CO. . . 16 W. R., 54

11. ——— *Lien on land—Payment by mortgagee on account of revenue assessed on land mortgaged as lakhiraj.*—An usufructuary mortgagee, to whom was pledged as lakhiraj land which was not valid lakhiraj, and which was subsequently assessed with revenue, is entitled to a lien against the mortgagor for sums of money paid by the former in discharge of the revenue. NURJOON SAHOO *v.* MOOJEEROODDEEN . . 3 W. R., 6

12. ——— *Money-decree—Lien on property of judgment-debtor.*—The holder of a simple money-decree does not acquire a lien on the property of his judgment-debtor. MONOHUR DASS *v.* KALLY DHUN DOBEY 8 W. R., 116

Upholding on review MOONA *v.* CHAND MONEE GOSSAIN . . 7 W. R., 20

See LUCHMUN SUHAE CHOWDRY *v.* GUJRAJ JHA [4 W. R., 45

13. ——— *Mortgage—*

would be entitled to enter into possession of the mortgaged properties. *B* died, leaving a widow, a daughter, and a sister *S*, his heirs. According to

obtained a decree by consent. The existence or right of *S* to a share in the properties was not known

LIEN—*continued.*

not pass to the purchasers, though the Bank purported to have brought the whole sixteen annas in the properties to sale. *R* then brought this suit for the recovery of possession of the six-annas share of the properties purchased at the sale by the Bank themselves, and which were now in their possession. *Held* that, the share of *S* not having been sold, the lien imposed upon it by the mortgage-deed remained intact and continued in the hands of the Bank. *Held* also that, under the covenant in the mortgage-deed above referred to, the Bank were entitled to remain in possession as mortgagees until the proportion of the debt, which might legitimately be imposed upon the six-annas share of the properties in their hands, was paid. LUTCHMIPUT SINGH BAHADUR *v.* LAND MORTGAGE BANK OF INDIA

[I. L. R., 14 Calc., 464

14. ——— *Joint Stock Company—"Secretaries and treasurers"—Advances and disbursements to, and on behalf of, the company—Lien on company's property—Contract Act (IX of 1872), ss. 171, 217, 221—Principal and agent.*—*E L & Co* were the secretaries and treasurers of the *B S M Company*, which went into liquidation. *E L & Co.* claimed to be creditors of the company for R1,12,000 in respect of advances made to, and expenses incurred and disbursements made on behalf of, the company from time to time and in the conduct of its business. Rupees one lakh of this amount was in respect of sums lent to the company and guaranteed by the claimants. The

property in respect of the above claim of R1,12,000. Other creditors disputed the possession and the right to the lien claimed. *Held* that, even assuming

any particular lien nor under s 217 of the Contract Act, because that section was inapplicable, having to do only with a lien on a sum of money of the principal in the hands of the agent nor under s 221 of the Contract Act, because the sums advanced and expended were not, as required by that section, "disbursements and services in respect of" the property on which the lien was claimed, but were loans made on behalf of the company generally and for the purposes of the whole concern. IN RE BOMBAY SAW MILLS COMPANY EWART LATHAM & Co.'s CLAIM

[I. L. R., 13 Bom., 314

15. ——— *Receipt of money in execution of decree—Repayment to judgment-debtor on reversal of decree by High Court—Subsequent*

LIEN—*continued.*

by the High Court, an appeal was preferred to the

16. ——— Lien on indigo factory—*Act X of 1859, ss. 110, 111—Sale in execution of decree.*—A 10-annas shareholder (*C*) in a factory, who was also manager of the whole, executed a kabuliat stipulating that as long as he was the mukhtear the lessor (plaintiff) was at liberty, in the event of the rent not being paid punctually, to take khas possession, or to lease the property to other parties; and that in case of another mukhtear being appointed, or the property being sold, the factory as well as the mukhtear or purchaser would be responsible for any

Act X of 1859, free of incumbrances created by the

lien upon the factory, he had no cause of action as against *L.* CHUMUN LALL CHOWDHRY *v.* RUGHOO NUNDUN SINGH . . . . 11 W. R., 194

PAL *v.* WISE . . . . 10 W. R., 210

18. ——— Right of lien—*Pleading—Setting up adverse title.*—In order that a defendant

perty. JUGGERNAUTH DOSS *v.* BRIJNAUTH DOSS

[I. L. R., 4 Calc., 323: 3 C. L. R., 375

19. ——— Lien for advances made to

LIEN—*continued.*

concern, and pledged and assigned the season's crop to *A* and *B*, who were pardanashins, to secure repayment of a large sum of money, consisting partly of the balance of previous loans from the husband of *A* and *B* and partly of a new loan to the extent of what was described in the deed as the estimated outlay of the season. The deed provided that *A* and *B* should have a first charge upon the indigo to be

mortgage the properties thereby mortgaged, pledged,

munication between *M* and *A* and *B*, that further advances would be necessary. According to *M's* account, *C* told him that *A* and *B* were unable to make further advances, and that he could, if they were needed, obtain them on the usual terms from the plaintiffs, who were indigo brokers. In previous years during the lifetime of the husband of *A* and *B*, who had held similar mortgages of the concern and of the crop in those years to secure advances made by him, such advances had, with the mortgagee's knowledge,

course was to be followed in the present instance that

make advances to the extent of R50,000, upon his as-

mortgage, and their claim being resisted by *M*, who

LIEN—*continued.*

M, and the holders for sale to establish their first charge in respect of their advances to *M*, upon 360 maunds of the indigo on the strength of their letters of assignment. *Held per* GARTH, *C.J.*, and PHEAR, *J.*, that the plaintiffs were neither in the position of managers of the concern nor of consignees of the indigo, and were therefore not entitled to any lien

20. ——— **Lien on tea garden**—*Priority of lien—Agreement by purchaser of moiety to pay working expenses to be charge on estate—Valuation to purchaser of moiety for whole estate.*—Where

from its own advances BROUGHTON *v.* SPINK [25 W. R., 243

21. ——— **Banian of firm, Lien of**—*Con-*

LIEN—*concluded.*

any custom to that effect. If the banian claims a lien, he must prove its existence either by showing

with the sub-agent except on the ground of bad faith. A banian not setting up a written agreement, nor asserting that he had advanced to the firm on the security of specific quantities, claimed a lien as against the consignor on merchandize consigned to the firm, whether arrived or in transit. The lien alleged was for the general balance of account, in virtue of an agreement extending to the whole

GRAHAM *v.* BAIJNATH I. L. R., 18 Calc., 573 [L. R., 18 I. A., 78

LIFE ESTATE.

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS—ESTATES ABSOLUTE OR LIMITED.

See LIMITATION ACT, ART. 141. [I. L. R., 20 Mad., 459

See WILL—CONSTRUCTION. [I. L. R., 21 Calc., 488 I. L. R., 23 Bom., 1, 80 I. L. R., 19 Bom., 221, 770

LIGHT AND AIR.

See CASES UNDER PRESCRIPTION—EASEMENT—LIGHT AND AIR.

———— Obstruction to—

See CASES UNDER INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO *RIGHTS OF PROPERTY.*

LIGHTS.

———— Obligation of vessels to carry—

See SHIPPING LAW—COLLISION. [6 Bom., O. C., 98

LIMITATION.

LIMITATION—*continued.*

See CASES UNDER BENGAL RENT ACT, 1869, SS 27, 29, 30, AND 58.

See CASES UNDER BENGAL TENANCY ACT, SCH. iii.

See CASES UNDER BOND.

See CASES UNDER CIVIL PROCEDURE CODE, 1877, SS. 257, 258.

See EXECUTION OF DECREE—APPLICATION

See EXECUTION OF DECREE—DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW I. L. R., 18 Bom., 203, 542 [I. L. R., 23 Calc., 876 I. L. R., 19 Bom., 258

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION, ETC. [B. L. R., Sup. Vol., 970 13 B. L. R., Ap., 27, 30 I. L. R., 1 Mad., 53 5 W. R., Mis., 14 7 N. W., 115 7 W. R., 19 I. L. R., 15 Bom., 28 I. L. R., 12 All., 571

See CASES UNDER LIMITATION ACT, XV OF 1877.

See CASES UNDER ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.

See CASES UNDER POSSESSION—ADVERSE POSSESSION.

LIMITATION—*continued.*

11 C. L. R., 395
24 W. R., 33, 418

See CASES UNDER SALE IN EXECUTION OF DECREE—INVALID SALES—DECREES BARRED BY LIMITATION.

See CASES UNDER TITLE—EVIDENCE AND PROOF OF TITLE—LONG POSSESSION

See WAGING WAR AGAINST THE QUEEN.
[7 B. L. R., 63

See WASTE 4 B. L. R., O. C., 1
[7 B. L. R., 131

1. LAW OF LIMITATION.

1. ——— **Nature of law**—*Prescription—Lex fori.*—The law of prescription or limitation is

RUCKMABOYE *v.* LALLOBHOY MOTTICHUND
[5 Moore's I. A., 234

2. ——— **Operation of law**—*Cause of action.*—The Statute of Limitations never begins to run until there has been a cause of action KHURUCKDHAREE SINGH *v.* REWUT LALL SINGH
[12 W. R., 168

3. ——— *Application to enter up judgment on warrant of attorney.*—The Statute of Limitations is no answer to a rule *nisi* to enter up judgment on a warrant of attorney. SOOJAN MULL *v.* HYDER SINGH . 1 Ind. Jur., O. S., 58

4. ——— *Agreement of parties.*—*Held* that the operation of the Law of Limitation cannot be prevented by any act of the parties or arbitrators unless as provided by law, and a suit beyond time cannot be entertained by the Courts merely because the person entitled to assert the right was by some arrangement or negotiation prevented from asserting it within the statutable period JEHANDAR KHAN *v.* MUNNOO
[1 Agra, 248

DAVIS *v.* ABDOOL HAMED . . 8 W. R., 55

5. ——— *Rule of Court.*—Nor can its operation be prevented by a rule of Court. KAMBINAYANI JAYAJI SUBBA RAJALU NAYANI VARU *v.* UDDIGHIRI VENKATARAYA CHETTY
[2 Mad., 268

6. ——— **Right of Government to defence of**—*Suits against Government by creditors of ex-King of Delhi.*—The Government of India, taking upon themselves to pay debts due against the

LIMITATION—*continued.*

1. LAW OF LIMITATION—*concluded.*

[10 W. R., P. C., 55

S. C. LALLA NARAIN DOSS *v.* ESTATE OF EX-KING OF DELHI . . 11 Moore's I. A., 277

2 QUESTION OF LIMITATION.

7. ——— **Adding defendant**—*Civil Procedure Code (Act XIV of 1882), ss 32, 363, 364.*—No question of limitation can arise ...

8. ——— **Right of Appellate Court to go into facts on question of limitation.**—There is no law which prevents a ... Appellate ...

[8 W. R., 364

9. ——— **Extension of period of limitation**—*Beng Reg II of 1805, s. 3, cl. 2—Ques-*

RAMKANAYE DOSS *v.* KISHEN CHUNDER ROY
[Marsh., 22: 1 Hay, 55

10. ——— **Question not raised by parties**—*Pleading—Small Cause Court Rule 19.*

[1 B. L. R., O. C., 49

11. ——— **Plea struck out irregularly**

LIMITATION—*continued.*

2. QUESTION OF LIMITATION—*continued.*

complaining that no adjudication had been given on the plea of limitation. *Held* that the power of a Court to deal with written statements which appear to contain irrelevant matter, or to be argumentative or unnecessarily prolix, is regulated by s. 124, Act VIII of 1859; and that, as the plea of limitation must be assumed to have been properly before the Judge, he was bound to adjudicate upon it. BOOLEE SINGH *v.* HUROBUNS NARAIN SINGH [7 W. R., 212

12. ——— Question raised on appeal —*Remand—Power of Appellate Court.*—Where in the lower Court an issue was raised whether the [illegible] ion, and the [illegible] the case on [illegible] aled against by the plaintiff; and the Appellate Court did not deal with the question of limitation, but remanded the case for a new trial on the merits,—*Held* that, on appeal from the new decree, the Appellate Court could entertain the question of limitation, and that the lower Court might have re-tried that issue on the facts found on the new trial. PHOOL COOMAREE BEBEE *v.* OONKUR PERSHAD BOISTOBEE [2 Ind. Jur., N. S., 50

S. C. PHOOL KOOMAREE BEBEE *v.* WOONKAR PERSHAD RUSTOBY . . . . 7 W. R., 67

NILJAREE *v* MUJEEBOOLLAH . 19 W. R., 209

13. ——— *Question not raised in lower Appellate Court.*—A plea of limitation overruled in the Court of first instance, and not brought before the lower Appellate Court, cannot be entertained by the High Court in special appeal. KASHEE CHUNDER TURKOBHOOSUN *v.* KALLY PROSUNNO CHOWDHRY . . . 9 W. R., 452

14. ——— *Limitation depending on facts.*—Where a plea of limitation can only be properly decided with reference to facts found in connection with the question of possession and dispossession, and where appellants have omitted to press evidence on the point, though they had every opportunity before the lower Appellate Court, it cannot be admitted to be taken in special appeal. RAMDHONE DASS *v.* RAM RUTTON DUTT [10 W. R., 425

15. ——— *Point for which evidence is necessary.*—Where the Statute of Limitation [illegible]

Nor in review. SARASVATI *v.* PACHANNA SETTI [3 Mad., 258

See, however, RAMANATHA MUDALI *v.* VAITHALINGA MUDALI . . . . 2 Mad., 238

where it was held that the principle of the decision in *Narasu Reddi* v. *Krishna Padayache*, 1 *Mad.*, 358, should not be extended.

It is now expressly laid down by s. 4 of the Limitation Act, 1877, that the question of limitation must be taken into consideration whether raised as a defence or not.

16. ——— *Question not taken* [illegible] meaning of s. 5 of the Limitation Act, for the appellant in that Court not presenting the appeal within the period of limitation prescribed, does not preclude the High Court from considering that decision in appeal. BECHI *v.* AHSANULLAH KHAN [I. L. R., 12 All., 461

17. ——— *Waiver of plea of limitation—Raising plea again on appeal to High Court after abandonment throughout case—Madras Boundary Marks Act (XXVIII of 1860), s. 25—Madras Boundary Marks Act Amendment Act (Mad. Act II of 1884), s. 9—Suit to set aside decision of the Survey officer.*—A suit filed [illegible] the defendant to show that an earlier copy was granted to plaintiff, or that the decision was pronounced in the plaintiff's presence. Against this remand order there was no appeal. At the rehearing, the question of limitation was not again raised, and the Munsif gave a decree on the merits. An appeal was preferred to the District Court, but no mention was made of the question of limitation. On appeal to the High Court,—*Held* that the question of limitation had been put aside by the consent of the parties who desired to have the case decided on the merits, and that the appellant could not be allowed to fall back on this plea of limitation which he had abandoned in the lower Courts. RANGAYYA APPA RAU *v.* NARASIMHA APPA RAU . I. L. R., 19 Mad., 416

18. ——— *Power of Appellate Court—Appeal on portion of case—Limitation Act, 1877, s. 4.*—Where a suit, which ought to have been dismissed under s. 4 of the Limitation Act, although limitation was not set up as a defence, is not dismissed, the defendant, in order that the

LIMITATION—*continued.*

2. QUESTION OF LIMITATION—*continued.*

question of limitation may be dealt with by the Appellate Court, must appeal on the whole case. ALIMUNNISSA KHATOON v. HOSSEINALI [6 C. L. R., 267

19. ———————— *Cross-appeal*—

was disallowed. The decree-holder appealed from

Khatoon v *Hossein Ali*, 6 C. L. R., 267, followed. RUGHU NATH SINGH MANKU v PARESHRAM MAHATA . I. L. R., 9 Calc., 635: 13 C. L. R., 89

20. ———————— *Omission to decide question.*—The Judge in appeal is bound to

ground of special appeal SAHIJI KESRAJI v RAJSANGJI JALMSANGJI 2 Bom., 169: 2nd Ed., 162

21. ———— **Question in reference for accounts to be taken**—*Waiver*.—In a suit for an account, where the defendant, while alleging the balance to be in her favour, contended that the plain-

by directing the commissioner to investigate the accounts with reference to the operation of the Act.—*Held*, on appeal (by COUCH, C.J, and WESTROPP, J), that the order of amendment was justified by the circumstances of the case, and that the defendant having raised the defence of limitation, and not having subsequently abandoned it, that question should be first decided. PIRBHAI RAVJI v. NENBAI [3 Bom., O. C., 164

22. ———— **Question raised after remand on special appeal**—*Law under the Limitation Act, 1859.*—A defence of limitation under Act XIV of 1859 could not be raised for the first time after there had been a remand on special appeal from the decree of the Court which has heard the cause on remand. *Buzl Ruheem* v. *Sreenath Bose*, 6 W. R., 178, followed *Kuria* v. *Gururar*, 9

LIMITATION—*continued*

2. QUESTION OF LIMITATION—*continued.*

there has not been any remand, so to raise such question MORU BIN PATLAJI v. GOPAL BIN SATU [I. L. R., 2 Bom., 120

23. ———— **Point of limitation taken for the first time in second appeal**—*Omission of Court of first instance to reject a plaint for limitation, Effect of.*—The plaintiff's suit to recover certain lands was dismissed by the Court of first instance and by the lower Appellate Court, but on second appeal was remanded for determination of plaintiff's alleged right of perpetual cultivation of the land On remand the District Judge gave a decision in favour of the plaintiff The defendant appealed to the High Court, and then for the first time raised the point of limitation *Held* that the objection was taken too late. The defendant had the opportunity of raising the objection under the Limitation Act, and, if necessary, of getting any question, on which it depended, tried by the Courts below;

each successive Court whenever the objection comes to view, and ought not to be assumed by inference. DATTU v KASAI . I. L. R., 8 Bom., 535

24. ———— **Question in execution of decree**—*Jurisdiction of Court where decree was*

transfer was made, and, on application by the decree-holder, the judgment-debtor's properties in Beerbhoom were attached Thereupon the judgment-debtor, objected to the attachment, and obtained an order under s. 239 of the Code of Civil Proce-

[I. L. R., 13 Calc., 257

25. ———— **Special and general question of limitation**—*Minority.*—Where the issue of limitation raised in the first Court was a special

LIMITATION—*continued.*

2. QUESTION OF LIMITATION—*continued.*

issue as to the particular provision on the subject of minority found in s. 11, Act XIV of 1859, plaintiffs were entitled to be heard on the issue of general limitation under cl. 12, s. 1, and to give evidence to show that the suit was not barred. BAHUR ALI *v.* SOOKEA BIBEE . . . 13 W. R., 63

as an interlocutory order, be objected to when the ultimate decision is appealed against. WUZEERUN BEEBEE *v.* WARRIS ALI . . . 1 W. R., 51

VITHAL VISHVANATH PRABHU *v.* RAMCHANDRA SADASHIV KIRKIRE . . 7 Bom., A. C., 149

But *see* BREKUN KOER *v.* MAHARAJAH BAHADOOR [Marsh., 66 : 1 Hay, 134

27. ———— Decision on plea by implication.—It is not necessary that the Court below should expressly overrule a plea of limitation; it is sufficient if the Court disposes of the question of limitation by implication. WISE *v.* ROMANATH SEN LUSKHUR . . . 2 Ind. Jur., O. S., 5

28. ———— Right to raise plea—*Landlord and tenant—Suit for possession—Trespasser.*—In a suit to recover possession, the defendant, by admitting the right of the plaintiff as the owner

land,—*i.e.*, whether he sues the defendant as a tenant or trespasser WATSON & CO. *v.* SHURUT SOONDEREE DEBIA . . . 7 W. R., 395

29. ———— *Landlord and tenant—False plea of tenancy—Trespasser.*—The plea of limitation can be raised and determined in a suit brought by a landlord against a person who is really a trespasser, but who has set up a false case of tenancy. DINOMONEY DABEA *v.* DOORGAPERSAD MOZOOMDAR

[12 B. L. R., F. B., 274 : 21 W. R., 70

30. ———— *Landlord and tenant—Adverse possession.*—Where the plaintiff sued for khas possession of land, it was held the defendants, tenants of the plaintiff, could raise the plea of limitation, on the ground that they had held possession of the land as bi-bowladars for more than twelve years previous to the suit. RUTTONMONEE DABEE *v.* KOMOLAKANTH MOOKERJEE

[12 B. L. R., 283 note : 12 W. R., 364

31. ———— *Landlord and tenant—Knowledge of adverse title.*—Limitation can be pleaded in a suit by a landlord against a tenant, but where the defendant claimed to hold on a mokurari tenure, to make the possession adverse, it must be shown that the plaintiff knew of the title set up by the defendant. TEKAITNE GOWRA KUMARI *v.* BENGAL COAL COMPANY

[12 B. L. R., 282 note : 13 W. R., 129

LIMITATION—*continued.*

2. QUESTION OF LIMITATION—*concluded.*

Affirmed by Privy Council . . 19 W. R., 252

32. ———— *Landlord and*

33. ———— *Landlord and tenant—Defendant pleading tenancy and adverse*

SAIBA *v.* NAGAPA . . I. L. R., 7 Bom., 98

34. ———— *Landlord and tenant.—Semble*—A sub-lessee without title cannot plead limitation against his landlord either by himself or through his lessor. MAHARAM SHEIKH *v.* NAKOWRI DAS MAHALDAR . 7 B. L. R., Ap., 17

S. C. MOHURUM SHAIKH *v.* NOWKUREEE DASS MOHULDAR . . . . 14 W. R., 357

But *see* NAZIMUDDIN HOSSEIN *v.* LLOYD [6 B. L. R., Ap., 130 : 15 W. R., 232

3. STATUTES OF LIMITATION.

(*a*) GENERALLY.

RAM PANDAY

[13 B. L. R., P. C., 177 : 20 W. R., 375

S. C. in lower Court . . 12 W. R., 443

36. ———— An Act of Limit-

37. ———— The applicability

39. ———— *Retrospective effect.*—The general rule as laid down in *Reg.* v. *Dorabji*, 11 *Bom.*, 117,—that "an Act of limitation,

LIMITATION—*continued.*

3. STATUTES OF LIMITATION—*continued.*

to be construed retrospectively. KHUSALBHAI *v.* KABHAI . . . . . I. L. R., 6 Bom., 26

(*b*) STATUTE 21 JAC. I, C. 16

40. ———— Action of contract—*Cause of action—Breach of contract and refusal to perform it.*—In actions of contract the breach of a contract is the cause of action, and the Statute of Limitations runs from the time of the breach, and not from the time of the refusal to perform the contract. In 1822 *A* purchased at a Government sale at Calcutta a

there was also a stipulation that the salt purchased should be cleared from the place of delivery within twelve months from the day of sale, otherwise the purchaser was to pay warehouse rent for the quantity then afterwards to be delivered. The purchaser paid the purchase-money, and received permits for the delivery of the salt, which was delivered to him in various quantities down to the year 1831, in which year an inundation took place which destroyed the salt in the warehouse, and there remained no salt to satisfy the contract. The purchaser petitioned the

place at the instance of the Government, who referred the matter to the Salt Collector. The Collector did not make his report till the year 1838, and upon that report the Government refused to

the final refusal, and that the remedy was barred

LIMITATION—*continued.*

3. STATUTES OF LIMITATION—*continued.*

by the statute. *Semble*—There may be an agreement that, in consideration of an enquiry into the

(*c*) OUDH, RULES FOR.

41. ———— ss. 9 and 14—*Suits on money*

for money lent for a fixed period, or for interest payable on a specified date or dates, or for breach of contract, unless there is a written engagement

these rules " and a decree of the Judicial Commis-

(*d*) BENGAL REGULATION III OF 1793, s. 14.

42. ———— s. 14—*Exemption from limit-*

SHURRUFFUTOONISSA

[3 W. R., P. C., 31: 8 Moore's I. A., 225

43. ———— *Exemption from limitation—Distant residence—Good cause for delay—Beng. Reg. II of 1805, s. 3.*—Where a party in pos-

LIMITATION—*continued.*

3. STATUTES OF LIMITATION—*continued.*

44. ———— *Deduction of time—Non-suit—Computation of limitation.*—According to the former procedure, when a suit before a competent

45. ———— *Deduction of time—Suit by minor after attaining majority—Non-allowance of pendency of suit by guardian.*—In a suit by a minor after attaining majority, no allowance can be made, under Regulation III of 1793, for the period of pendency of a suit brought by his guardian and eventually non-suited. LUCHMUN PERSHAD *v.* JUGGERNATH DOSS . . . W. R., 1864, 2

46. ———— *Deduction of time—Suit in Collector's Court—Reference to civil suit.*—A suit for proprietary right in certain rent-free land

OKHETOONISSA *v.* KOOCHIL SIRDAR [2 W. R., 45

47. ———— *Deduction of time—Suit for excess of jama—Suit first brought in summary department*—The time occupied in the summary department in recovering excess of jama according to a decree should be deducted from the period of limitation for the regular suit which is afterwards brought for the same purpose, and to which the plaintiff was referred by the Court. HUROMONEE GOOPTIA *v.* GOBIND COOMAR CHOWDHRY [5 W. R., 51

48. ———— *Deduction of time—Disputed title—Sufficient cause—Substitution of parties.*—The plaintiffs as heirs of *R*, the husband of one *B*, more than twelve years after her death sued to recover lands alienated by her. As an answer to the plea of limitation, they alleged that, in a suit for other property brought against *B* in her lifetime, they presented a petition after her death praying

LIMITATION—*continued.*

3. STATUTES OF LIMITATION—*continued.*

49. ———— *Deduction of time.*—A

ROY CHOWDHRY [4 W. R., P. C., 63; 8 Moore's I. A., 308

50. ———— *Deduction of time—Beng. Reg. II of 1805, s. 3—Adverse possession—Suit by heir for share of inheritance.*—*A* died in 1813. At

alternative as customary heir. Suits were brought by the two claimants, in the course of which questions were raised as to who would be entitled in case

among such heirs. A suit was in consequence instituted in 1852 by one of the heirs of *A* to carry into execution the decree of the Privy Council made in 1842. *Held* that, although the claim which accrued so long ago as the death of *A* would have been in ordinary circumstances barred by the Bengal Regulations III of 1793, s. 14, and II of 1805, s. 3, yet that, as the pendency of the appeal rendered

Regulations. *Held* also that, although one of the original claimants had obtained possession under an order of the Court, and retained the same until the final decree in 1842, it was not such a quiet and undisturbed possession, under the circumstances, as to operate by Regulation II of 1805, s. 3, as a bar to the suit. ENAYET HOSSEIN *v.* AHMED REZA [7 Moore's I. A., 238

(*e*) BENGAL REGULATION VII OF 1799, s. 18.

51. ———— Ineffecutual execution proceedings in summary suit—*Beng. Reg. VII of 1819, s. 18—Cause of action.*—In a summary suit under Regulation VII of 1799, the plaintiff obtained a decree against his gomastah for certain moneys due

LIMITATION—*continued.*

3. STATUTES OF LIMITATION—*continued.*

available in satisfaction of the debt. *Held* his cause of action in the regular suit was the same as his cause of action in the summary suit, and that the period of *limitation must* be reckoned from the time when that cause of action accrued, and not from the date of the summary decree, or from the time when the plaintiff discovered that he could not obtain satisfaction of such decree. SREENATH GHOSAL *v.* BISSONATH GHOSE

[B. L. R., Sup. Vol., Ap., 10: 5 W. R., 100

(*f*) BOMBAY REGULATION I OF 1800, s 13.

52 ———— s. 13—*Offer to compromise suit—Admission—Residence of defendant out of jurisdiction.*—The offer of a specific sum of money by way of compromise in no way involving an admission of the justice of the plaintiff's demand further than what may be inferred from the offer of any compromise (an inference which is never permitted), could not bring the plaintiffs within the

beyond the limits of the E I. Co.'s Court was not a good and sufficient cause, within the meaning of the same exception, to excuse the plaintiff's delay in suing beyond the twelve years BHAEE CHUND *v.* PURTAB CHUND

[5 W. R., P. C., 31: 1 Moore's I. A., 154

53. ———— *Suit for land—Land at-*

(*g*) MADRAS REGULATION II OF 1802

54. ———— s. 18, cl. 4—*Irregular proceed-*

VENGAMA NAIDOO

[1 W. R., P. C., 309: 9 Moore's I. A., 66

55. ———— *Deduction of time bond was under attachment—Good and sufficient cause.*—Where a bond was seized under legal process of attachment after it had become due, but before the lapse of twelve years from its date, and remained

LIMITATION—*continued.*

3. STATUTES OF LIMITATION—*continued*

under attachment for several years,—*Held* that there was "good and sufficient cause" for the lapse of

NAYAK . . . 1 Mad., 150

(*h*) BENGAL REGULATION II OF 1805.

56. ———— Suit for rent—*Adverse possession—Suit for ejectment.*—A suit instituted by a zamindar in 1857, for the recovery of rent, for six

gulation II of 1805. *Held* also that a suit to eject

LLEE DEBIA

R., P. C., 1

I. A., 214

57 ———— Suit for possession—Under Regulation II, 1805, sixty years is fixed as the absolute limit beyond which neither fraud nor any other special allegation will give a cause of action. In a suit by Government against ghatwals, the defendants were found to have been in possession "for a very long time," and although they had failed to prove possession in excess of sixty years, the onus was held to lie on the Government to prove possession within sixty years. BROMANUND GOSSAIN *v.* GOVERNMENT

[5 W. R., 136

58. ———— s 2, cl 2—*Suit for resumption and assessment by Government*—The right

from the cause of action. So held by the Judicial Committee of the Privy Council on appeal from a decree made by the Special Commissioner, on a claim by Government where mahatern lands were held as lakhiraj by the Raja of Burdwan before the Company's accession to the Dewany in 1765, and no claim had been made by Government to resume the lands for assessment till the year 1836 DHEERAJ RAJA MAHATAB CHUND BAHADOOR *v.* GOVERNMENT OF BENGAL . . 4 Moore's I. A., 466

59. ———— s. 3—*Beng Reg XIX of 1793*

KOOWAR *v.* BANKUBEHARI CHOWDHRY

[3 B. L. R., A. C., 446

S. C. KASHEENATH KOONWAR *v.* BUNKO BEHAREE CHOWDHRY . . . 12 W. R., 440

LIMITATION—*continued.*

3. STATUTES OF LIMITATION—*continued.*

60. ——————— *Beng. Reg. II of 1803, s. 18—Violent and forcible possession.*—This case,

to plead their wrong in support of the plea of limitation. LALL DOKUL SINGH *v.* LALL ROODER PURTAB SINGH . . . 5 W. R., P. C., 95

61. ——————— *Fraudulent or forcible*

fraud, or other unjust, dishonest means, must be considered with some strictness (otherwise the door would be opened widely to a large class of claims which ought properly to be barred), and the alleged fraudulent or forcible dispossession must be clearly established. RAJENDER KISHORE SINGH *v.* PERLHAD SEIN . . . 22 W. R., 165

62. ——— *Maintenance, Liability to pay.*—

tion II,

occupant

wise than

proceeds of the property to another during his lifetime. GORDON *v.* ABOO MAHOMED KHAN [5 W. R., P. C., 68

(i) BOMBAY REGULATION V OF 1827.

63. ——— s. 1—*Miras land.*—The law of limitation contained in s. 1, Regulation V of 1827, applies to miras land as well as to all other descriptions of immoveable property. Special Appeals, No. 2520 of 1850, *Morris, Sel. Dec., 51;* and No. 3064, *Morris, S D A Rep, Vol. II,* overruled SALU KOM RAGHUJI *v.* RAVAJI BIN RAMJEE [1 Bom., 41

64. ——— ss. 3 and 4—*Claim for account by representative of deceased partner against surviving partners.*—A right to an account claimed by the representatives of a deceased partner in a firm against his surviving partners fell under s. 4 of Regulation V of 1827, and was not a debt within the meaning of s. 3 of that Regulation. BHAICHAND BIN KHEMCHAND *v.* PULCHAND HARICHAND [8 Bom., A. C., 150

65. ——— s. 7, cl. 2—*Claim without binding decree having been made.*—A case was within the exception contained in cl. 2, s. 7, *Regulation V of 1827, of the Bombay Code (Limitation of Suits),* by reason of a claim having been preferred to the authority that was then the supreme power in the State, although a satisfactory and binding decree was not obtained. JEWAJEE *v.* TRIMBUKJEE [6 W. R., P. C., 38 : 3 Moore's I. A., 138

66. ——————— s. 7, cl. 3—*Age of*

MORESHVAR JOSHI 2 Bom., 344 : 2nd Ed., 325

(j) ACT XXV OF 1857, s. 9.

67. ——— s. 9—*Act IX of 1871, s. 1—Minority, Disability arising from—Forfeiture of property of rebel—Repeal, Effect of.*—B S, the

then a minor, to recover possession of the estate of his father *B S. Held* that the suit not having been instituted within one year from the seizure of

68. ——————— *Omission to adjudicate forfeiture of property—Seizure of property of suspected person.*—The property in suit was attached by the Magistrate in 1858, and seized in 1862, without adjudication of forfeiture, as provided by Act XXV of 1857, and the owner did not surrender himself to undergo trial, and did not establish his innocence, or prove that he did not escape or evade justice, within one year from the date of seizure, as provided by s. 8 of that enactment. *Held* that the suit was not barred by

trial, and not where there is a mere seizure by a Magistrate of a suspected person's property without further proceedings. MAHOMED YUSUF ALI KHAN *v.* GOVERNMENT . . . . 1 Agra, 191

(k) ACT IX OF 1859.

69. ——— ss. 18 and 20—*Involuntary absence—Refusal to surrender.*—Although s. 18,

LIMITATION—*continued*

3 STATUTES OF LIMITATION—*continued.*

Act IX of 1859, deals with the property of an offender on conviction, and provides that the offender's failure to surrender himself within one year from the date of seizure would preclude the Courts from questioning the validity of seizure, yet the general terms of that section cannot, in the absence of express provision to that effect, be construed to mean that any

removed from the operation of that section. The plaintiff's suit was not barred by s 20, Act IX of 1859, which deals with the rights of persons who are not

70. ———— s. 20—*Forfeiture of rebel's property.*—Where the property of a rebel has been sold, any party claiming an interest in the thing sold is bound, under s 20, Act IX of 1859, to bring his suit within one year from the date of the order of confiscation PROSONNO PANDEY *v.* GUNGA RAM [W. R., 1864, 2

NEPAL SINGH *v.* RAM SARUN SINGH [W. R., 1864, 5

NUNDUN SINGH *v.* KOOLSOOM W. R., 1864, 377

AMEEROONNISSA *v.* SHIB SUHAI . 1 Agra, 271

71. ———— *Attachment of rebel's property.*—The property of certain rebels was confis-

[1 Agra, 46

72. ———— *Disability of minority—Forfeiture of rebel's property.*—Certain property, in the actual possession of a rebel, was confiscated by

LIMITATION—*continued.*

3. STATUTES OF LIMITATION—*continued.*

forfeited property which had been confiscated before its passing MAHOMED BAHADUR KHAN *v* COLLECTOR OF BAREILLY [13 B. L. R., 292: 21 W. R., 318 L. R., 1 I. A., 167

73. ———— *Forfeiture of property—Cause of action.*—In cases of confiscation, limitation runs not from the date on which confiscation is sanctioned by the Government, but rather from the date on which the property is actually attached on the part of the Government. DEO KARUN *v.* MOHAMED ALI SHAH . . . 3 N. W., 328

74. ———— *Foreclosure proceedings.*—Proceedings to foreclose are not the "suit" contemplated by s. 20, Act IX of 859. NUND UN SINGH *v.* KOOLSOOM . . . . W. R., 1864, 377

75. ———— *Suit to redeem after confiscation of mortgagee's interest*—Where the rights and interests of mortgagees only are confiscated and granted, the suit to redeem by a mortgagor is not barred by s 20, Act IX of 1859. RAMDHUN *v.* BHOWANEE SINGH . . 3 Agra, 139

76. ———— *Forfeiture of rebel's property.*—A Hindu widow in possession of a six-annas zamindari share of her husband's sold the share in 1855 to persons who in 1858 were convicted of

sion and mesne profits was brought, just before the

by s. 20 of Act IX of 1859. *Ramdhun v. Bhawanee Singh, 3 Agra, 139*, *Bhagwan Das v. Banee Dalal, 2 S. D. A., N.-W. P, 1864, 220*; and *Mahomed Bahadur Khan v. Collector of Bareilly, 13 B. L. R., 392 L. R., 1 I. A., 167*, referred to. RAMPHUL TIWARI *v.* BADRI NATH [I. L. R, 13 All., 108

77. ———— *Suit by mortgagee for possession after foreclosure.*—A suit by a mortgagee

Act allows a concurrent period of twelve years to sue in the ordinary Civil Courts for confirmation of civil rights. GOBIND PANDEY *v.* HEEMUT BAHADOOR [6 W. R., 42

78. ———— *Suit by mortgagee of confiscated property to enforce his lien against grantees.*—The plaintiff was the mortgagee of property confiscated in the Mutiny. He asserted his lien in May 1859, and when the property was afterwards

LIMITATION—*continued.*

3. STATUTES OF LIMITATION—*continued.*

accrued previously to that day, and which had not been barred under previous enactments, as well as to suits upon causes of action which accrue afterwards, was Act IX of 1871. RAMCHANDRA *v.* SOMA
[I. L. R., 1 Bom., 305 note

And *see* NOCOOR CHUNDER BOSE *v.* KALLY COOMAR GHOSE . . I. L. R., 1 Calc., 328

97. ——————— *Operation of Act—Appeals and applications—General Clauses Act, 1868.*—The Limitation Act, 1871, came into operation from 1st July 1871 with respect to appeals and applications, and was not controlled by the General Clauses Consolidation Act, 1868, s. 6. GOVIND LAKSHMAN *v.* NARAYAN MORESHVAR
[11 Bom., 111

BALKRISHNA *v.* GANESH . 11 Bom., 116 note

RUGHOO NATH DOSS *v.* SHIROMONEE PAT MOHADEBEA . . . . . 24 W. R., 2

98. ——————— *Operation of Act—Suit barred when Act came into force.—Quære*—Whether suits barred under Act XIV of 1859 before Act IX of 1871 came into force could, by reason of the alteration of the periods of limitation in the latter enactment, be sustained. ABDUL KARIM *v.* MANJI HANSRAJ . . I. L. R., 1 Bom., 295

99. ——————— *Operation of Act—Revival of claim—Repeal of Act.*—A claim barred by limitation when Act IX of 1871 came into force was not revived by the passing of that Act. VINAYAK GOVIND *v.* BABAJI . . I. L. R., 4 Bom., 230

100. ——————— *Operation of Act—Suit for maintenance.*—A claim once barred cannot be

101. ——————— *Operation of Act—Suit on bond barred by Act XIV of 1859.*—The Limitation Act, 1871, did not give a new period of limitation to a suit on a bond which was barred by the Limitation Act of 1859 before the Act of 1871 came into force. VENKATTACHELLA MUDALI *v.* SASHAGHERRY RAU . . 7 Mad., 283

MOLAKATALLA NAGANNA *v.* PEDDA NARAPPA
[7 Mad., 288

102. ——————— *Suit on bond payable on demand—Cause of action.*—In a suit brought in August 1873 on a bond, payable on demand, dated

of the new law was that the time having once begun to run could not be stopped. The demand in 1871 could have no effect, for it was neither by the old

LIMITATION—*concluded.*

3. STATUTES OF LIMITATION—*concluded.*

nor the new law a mode of giving a new point of departure. VENCATARAMANIER *v.* MANCHE REDDY
[7 Mad., 298

103. ——————— s. 2—*Bom. Reg. V of 1827,*

he had lived separate from the defendant for forty years previously to the institution of the suit, and that he had not during that period received any portion of the profits of the ancestral property. The defendant pleaded limitation. Both the lower Courts held that the case was governed by Act IX of 1871,

estate sued for by his uninterrupted possession as proprietor for more than thirty years before Act IX of

104. ——————— sch. II—*Suits before Act came into force.*—Act IX of 1871 did not apply to suits instituted before the 1st April 1873. LUCHMEE PERSHAD NARAIN SINGH *v.* TILUCK DHAREE SINGH . . 24 W. R., 295

105. ——————— art. 168—*Registration Act, 1871—Registration of memorandum of decree under Act XX of 1866.*—The "Indian Registration Act" mentioned in the new Limitation Act (IX of 1871), sch. II, art. 168, is the Registration Act of 1871, and that article cannot apply to a decree of which only a memorandum was registered under Act XX of 1866. RUGHOO NUNDUN SINGH *v.* COCHRANE . . . 24 W. R., 372

LIMITATION ACT, 1877.

1. ——————— Operation of Act—*Matters*

LIMITATION ACT, 1877—*continued.*

into force, had already become barred by the operation of the prior Limitation Act. SHUMBHONATH SHAHA *v.* GURUCHURN LAHIRI

[I. L. R., 5 Calc., 894: 6 C. L. R., 437

MOHIMA CHUNDER ROY CHOWDHURI *v.* GOURINATH DEY CHOWDHURI . . 2 C. W. N., 162

2. ——— *Limitation Act, 1871, s. 1—Suits before 1st April 1873 — Quære—* Whether, inasmuch as Act IX of 1871 is repealed by Act XV of 1877, and the latter Act contains no provision similar to that contained in s. 1 of Act IX of 1871, Act XIV of 1859 can be said to have been repealed in respect of suits instituted before the 1st of April 1873 RADHA PROSAD SINGH *v.* SUNDUR LALL

[I. L. R., 9 Calc., 644

3 ——— *Limitation Act, 1871, s. 1—Application for execution of decree—General Clauses Consolidation Act, 1828, s. 6 — Held,* following *Mungul Pershad Dichit* v. *Grija*

further that under s 6 of Act I of 1868 the repeal of Act IX of 1871 by Act XV of 1877 does not affect any proceedings commenced before the repealing Act came into before. *Re Ratonsi Kalianji, I. L. R., 2 Bom., 148,* followed BEHARY LALL *v.* GOBERDHUN LALL I. L. R., 9 Calc., 446: 12 C. L. R., 431

4. ——— *Application for execution*

[I. L. R., 11 Calc., 55

5. ——— *Limitation applicable to execution of decree passed when Act XIV of 1859 was in force—Execution of decree—Disability of decree-holder—Minority—Limitation Act (XIV of 1859, ss. 11, 14, and 20, and XV of*

minor when the decree was passed, and did not attain his majority till the 25th September 1879. *Held*

LIMITATION ACT, 1877—*continued.*

the case previous to the date on which Act XV of 1877 came into operation, and as under s 11 the decree-holder was entitled to have the time during which he was a minor deducted from the period

Doyal v. *Hurryhur Saha, I. L. R., 5 Calc., 897: 6 C. L. R., 489, Shambhu Nath Shaha Chowdhry* v. *Guru Churn Lahiri, I. L. R., 5 Calc., 894 6 C. L. R., 437,* approved. JUG MOHUN MAHTO *v.* LUCHMESHUR SINGH I. L. R., 10 Calc., 748

6. ——— *Debt, Suit for.*— The law of limitation governing a suit for a debt is that law which is in force at the date of its institution. MOHESH LAL *v.* BUSUNT KUMAREE

[I. L. R., 6 Calc., 340: 7 C. L. R., 121

BANSIDHAR *v.* HARSAHAI I. L. R., 3 All., 340

——— s. 2.

1. ——— *Suit on promissory note*

limitation so prescribed by Act XV of 1871 is shorter than that prescribed by Act IX of 1871 within the meaning of s 2 of Act XV of 1877 OMIRTO LALL DEY *v.* HOWELL . 2 C. L. R., 426

2. ——— *Suit on promissory note*

ADMINISTRATOR GENERAL OF BENGAL *v.* KEDAR NATH MOITRY . . . 4 C. L. R., 102

3 ——— *Suit on promissory note*

4. ——— and art. 73—*Shorter*

LIMITATION ACT, 1877—*continued.*

period prescribed by art. 72 of the second schedule to Act IX of 1871. The language of Acts IX of 1871 and XV of 1877 leads to the conclusion that by each of these enactments the starting point and period given in its schedule were to take the place of those given by the Act which preceded it in the case of all suits

medy APPASAMI v. AGHILANDA [I. L. R., 2 Mad., 113

5. ———— *Bond of 1869 payable on demand—Curtailment of period of limitation.*—Where a suit was brought upon a registered bond, dated 1869, payable on demand, and demand was made in September 1876,—*Held* that the period of limitation was in effect curtailed by Act XV of 1877, and that the plaintiff was entitled to two years from 1st October 1877 under the provisions of s. 2, although under Act XIV of 1859 (in force when the bond was executed) the limitation period was six years from the date of the bond. SABAPATI CHETTI v. CHEDUMBARA CHETTI . . . I. L. R., 2 Mad., 397

6. ———— *Registered bond payable on demand—Act XIV of 1859 (Limitation Act)—Act IX of 1871 (Limitation Act).*—The cause of action in a suit on a registered bond bearing date the 2nd March 1870 was alleged to have arisen on the 5th January 1879, the date of demand Under Act XIV of 1859, the limitation for such a suit was six years computed from the date of the bond. Before that period expired, Act IX of 1871 came into force, which provided a limitation for such a suit of three years computed from the date of demand. *Held* that, as the cause of action and the

barred, as in either case limitation began to run from the date of such bond. BANSI DHAR v. HAR SAHAI [I. L. R., 3 All., 340

7. ———— *Bond payable on demand—Act IX of 1871 (Limitation Act).*—Act XV of 1877, by making the period of limitation for a suit on a bond payable on demand computable from the date of its execution, has shortened the period of limitation prescribed for such a suit by Act IX of 1871, under which the period was computable from the date of demand *Held* therefore that under the provisions of s 2 of Act XV of 1877 a suit on such a bond executed on the 14th December 1869, having been brought within two years from the date that Act came into force, was within time. RUP KISHORE v. MOHNI . . I. L. R., 3 All., 415

8. ———— *Bond—Change in Limitation Acts*—The defendant executed, on the 20th April 1875, a bond to the plaintiff, who, without

since the date of the bond. ICHHASHANKAR v. KILLA . . . . I. L. R., 4 Bom., 87

9. ———— and art. 64—*Suit on account stated—Act IX of 1871 (Limitation Act), sch. II, art. 62.*—The accounts in a suit on an account stated were stated when Act IX of 1871 was

that Act The suit was brought, however, after the passing of Act XV of 1877, and by reason of the accounts not being signed did not come within the scope of art. 64 of sch. II of that Act *Held* that the words in s 2 of Act XV of 1877, "nothing herein contained shall be deemed to affect any title ac-

by limitation. JULFIKAR HUSAIN v. MUNNA LAL [I. L. R., 3 All., 148

10. ———— *Suit by person excluded*

enforce a right to share therein, was twelve years from the time when the plaintiff claimed and was re-

KHOOTIA [I. L. R., 7 Calc., 461: 9 C. L. R., 243

11. ———— and art. 134—*Mortgage—Redemption—Suit against purchaser from mortgagee—Purchase in good faith—Limitation Act (IX of 1871), sch. II, arts. 134 and 148.*—Under the Limitation Act, IX of 1871, the period of limitation for suits to recover possession of property purchased from a mortgagee depended upon the good faith of the purchaser. A suit against a purchaser in good faith was barred after twelve years from the date of the purchase, under art. 134 of sch. II. In other cases a suit might be brought against the purchaser within sixty years from the date of the mortgage, under art. 148 of sch. II. Art. 134 of the later Limitation Act (XV of 1877), by the omission of the words "in good faith" makes twelve years from the date of the purchase the period of limitation for all such suits, without reference to the question of good faith on the part of the purchaser.

LIMITATION ACT, 1877—*continued.*

IX of 1871; and consequently, under the provisions of art 2 of the Limitation Act (XV of 1877), the plaintiff in such a suit has two years from the 1st October 1877. BAIYA KHAN DAUD KHAN v. BHIKU SAZBA . . . I. L. R., 9 Bom, 475

12. — — *Suit filed after repeal of Act IX of 1871.*—A claim to attached property having been disallowed under s 246 of Act VIII of 1859, a suit was filed on the 17th February 1879. *Held* that by s. 2 of the Limitation Act, XV of 1877, the suit was governed by the former Limitation Act, IX of 1871, by which the plaintiff was entitled to bring his suit within twelve years from the claim being disallowed AMIR HOSSEIN v IMAMBANDI BEGUM . . . 11 C. L. R, 443

13 ——— and art. 11—*Claim to mortgaged property—Execution of decree*—In execution of a decree upon a mortgage, a claim to the mortgaged property was put in under s 246 of Act VIII of 1859 by certain persons, on the ground that they had purchased the right,

Held that the provisions of the last paragraph of s 2 of Act XV of 1877 applied, and that the suit was not barred RAJ CHUNDER CHATTERJEE v MODHCOSOODUN MOOKERJEE

[I L R, 8 Calc., 395: 10 C. L. R, 435

14. ——— *Application to execute decree barred by Act IX of 1871*—The words in s. 2 of Act XV of 1877—"nothing herein shall be deemed to revive any right to sue"—should be used in their widest signification, and will include any application invoking the aid of the Court for the purpose of satisfying a demand. Where therefore a

IX of 1871), on the ground that he was entitled to take advantage of art. 179 of sch. II of Act XV of 1877, which was more favourable to him,—*Held* that, under the wording of s 2 of the latter Act, he was not entitled to do so. NURSING DOYAL v. HURRYHUR SAHA

[I. L. R, 5 Calc., 897: 6 C. L. R., 489

SHUMBHOONATH SHAHA v. GURUCHURN LAHIRI
[I. L R., 5 Calc, 894: 6 C. L. R., 437

——— s. 3.

See EASEMENT . I. L. R., 23 Calc., 55

LIMITATION ACT, 1877—*continued.*

——— *Defendant—Person through whom a defendant derives his liability to be sued—Purchaser at auction-sale—Suit by a true owner to recover possession—Adverse possession —*

. . . the 7th December 1871, that is, subsequent to the mortgage to *M*, *R* sold the sixty-two thikans to the plaintiff, but did not give up possession On the 18th June 1872, the sixty-two thikans were sold in execution of a decree against *R*, and were purchased at the auction-sale by *A*, who redeemed the fourteen thikans from the mortgagee. On the 7th December 1883, the present suit was filed by the plaintiff to recover possession against the heirs of *R* and *M* On the 17th January 1884, *A* was joined as a co-defendant to the suit. *Held* that the plaintiff's claim against *A* was time-barred with respect to the forty-eight thikans which were not mortgaged, *A* being entitled to add to the period of his possession that of *R*, who remained in possession after the sale to the plaintiff ALI SAHEB v. KAJI AHMAD

[I. L R., 16 Bom., 197

——— s. 4 (1871, s. 4).

1. ——— *"Applications"—"Appeal"—Pauper appeal—Pauper application for review.*—In the Limitation Act it was intended to draw a clear distinction between what are styled "applications" and what are styled "appeals" LAKSHMI v ANANTA SHANBAGA . I. L R., 2 Mad., 230

2. ——— *Distinction between suits, appeals, and applications—Jurisdiction*—The distinction made for the purposes of limitation between suits, appeals, and applications by the Limitation Acts has no bearing upon a question of jurisdiction. IN RE BALAJI RANCHHODDAS

[I. L. R., 5 Bom., 680

3 ——— *Presentation of plaint—Transfer of case.*—A suit was instituted in Pubna, and on application to the High Court for authority to proceed with it in Pubna, the High Court ordered its transfer to Dacca. Instead of merely transferring the suit to Dacca, the Pubna Court returned the plaint, in order to its being presented anew in the Dacca Court For the purpose of computing limitation, the suit was held to have been instituted on the day when it was admitted by the Pubna Court. TAKHUROODEEN MAHOMED ESHAN CHOWDHRY v. KURIMBUX CHOWDHRY . . . 3 W. R., 20

KHELLAT CHUNDER GHOSE v. NUSSEEBUNISSA BIBEE . . . . . . 16 W. R., 47

4. ——— *Presentation of plaint—Placing petition on table.*—It must be presented to the proper Court. The placing a petition on the table when the officer is not present is not a presentation to him. TAJ ULDEEN KHAN v. GHAFOORUL-NISSA . . . . . 3 N. W., 341

LIMITATION ACT, 1877—*continued.*

The presentation of a plaint at the private residence of the Munsif was held not a sufficient institution of the suit. JAI KUAR v. HEERALAL [7 N. W., 5

5. ———— *Presentation of plaint when proper Court was closed.*—Where a plaintiff

to the proper Court IN THE MATTER OF THE PETITION OF GANESH SADASHIV 5 Bom., A. C., 117

6. ———— *Plaint presented during vacation to wrong officer.*—Where a plaint was presented to a karkun left in charge of a Court

karkun was invalid, and did not prevent the period of limitation from running. NANDVALLABH v. ALIBHAI ISYAGANI 6 Bom., A. C., 254

7. ———— *Presentation of plaint when Court was closed*—Where a plaintiff presented a plaint to the District Court, the Subordinate Judge's Court in which he ought to have presented it being then temporarily closed, it was held that the District Court could not be considered a Court of first instance competent to receive the plaint. *In re Sadashiv, 5 Bom, A. C., 117,* overruled *Motilal Ramdas v. Jamnadas, 2 Bom., 42,* followed. RAMAYA ELAPA v. MUHAMADBHAI 10 Bom., 495

8. ———— *Gazetted holiday—Computation of time for presentation of appeal.*—In calculating the time allowed by law for the presentation of an appeal to a District Court, an appellant is entitled to deduct the last day, being a gazetted holiday, although the District Judge held his Court on that day BOYAMMA v. BALAJEE RAU [I. L. R., 20 Mad., 469

9. ———— *Presentation of plaint—Computation of time.*—The plaintiff's suit was barred by the Limitation Act on the 11th of May

10. ———— *Presentation of plaint*

The instrument of sale was

LIMITATION ACT, 1877—*continued.*

registered on the 9th June 1879. On the 14th June 1880, the Court in which such suit was instituted

Orde, I. L. R., 2 All., 241: L. R., 6 I. A., 126, that, for the purposes of limitation, such suit was insti-

suit was therefore within time. KHEM KARAN v. HAR DAYAL I. L. R., 4 All., 37

11. ———— *Presentation of plaint—Plaint not accepted on day it is presented.*—A plaintiff was held to be technically right in stating that the fact of his plaint not having been accepted on the day on which it was actually presented, ought not to deprive him of his right of suit. YOUNG v. MACCORKINDALE . 19 W. R., 159

12. ———— *Civil Procedure Code (1882), s. 54—Court Fees Act (VII of 1870), ss. 6*

Court-fee. VENKATRAMAYYA v. KRISHNAYYA [I. L. R., 20 Mad., 319

13. ———— *Presentation of plaint insufficiently stamped—Order for registration of plaint made after expiration of time.*—Where a plaint, insufficiently stamped, was duly presented

IRTAZA HOSSEIN v. HURRY PERSHAD SINGH [7 W. R., 241

14. ———— *Plaint insufficiently stamped—Date of institution of suit—Court-fees, Payment of requisite, on a date subsequent to that on which plaint was presented, Effect of, on period of limitation*—The date of the institution of a suit should be reckoned from the date of the presentation

15. ———— *Civil Procedure Code, s. 54—Court Fees Act (VII of 1870), s. 28—Plaint insufficiently stamped—Power of Court to grant*

LIMITATION ACT, 1877—*continued.*

time for making good the deficiency.—When a Court fixes a time under cl. (*a*) or cl. (*b*) of s. 54 of the Code of Civil Procedure, it must be a time within limitation. S. 54 does not give a Court any power to extend the ordinarily prescribed period of limitation for suits. Where therefore a plaint was presented on the last day to save its being barred by limitation insufficiently stamped, and at an hour when the office being closed it was impossible to obtain the necessary stamps, and the Munsif made an order to present it on the next open Court day,—*Held* that under s. 4 of the Limitation Act the plaint had not been presented in time and the suit was barred. *Moti Sahu* v. *Chhatri Das, I. L. R., 19 Calc., 780,* and *Yakutunnissa Bibee* v. *Kishoree Mohun Roy, I. L. R., 19 Calc., 747,* discussed JAINTI PRASAD v. BACHU SINGH . I. L. R., 15 All., 65

16. ———— *Plaint insufficiently stamped, when deemed to have been presented—Suit, Institution of—Civil Procedure Code (Act XIV of 1882), s 54 (b)*—A plaint having been filed upon the last day allowed by the law of limitation written upon paper insufficiently stamped, the plaintiff was ordered to supply the requisite stamp paper within seven days. This order was complied with within the time appointed, and the plaint was duly registered. *Held* that the suit should be taken as instituted on the day when the plaint was first presented to the proper officer, and that the suit was not barred *Balkaran Rai* v *Gobind Nath Tiwari, I. L. R., 12 All., 129,* distinguished and doubted. HURI MOHUN CHUCKERBUTTI v NAIMUDDIN MAHOMED . I. L. R., 20 Calc., 41

17. ———— *Suit instituted within time—Plaint insufficiently stamped—Order to supply the deficiency not complied with within the time allowed—Registration of plaint—Civil Procedure Code (Act XIV of 1882), s 54—Limitation Act (XV of 1877), s 4*—A plaint was filed one day [illegible]

Held that the suit was barred by limitation, as the deficient Court-fees were not supplied within the

[illegible]

18. ———— *Presentation of a plaint insufficiently stamped—Plaint not rejected, but the*

[illegible]

LIMITATION ACT, 1877—*continued.*

[illegible]

be considered to have been instituted on the date when the plaint was first presented *Hury Mohun Chuckerbutty* v. *Naimuddin Mahomed, I L. R., 20 Calc., 41,* and *Moti Sahu* v. *Chhatri Das, I. L. R., 19 Calc., 780,* followed. *Yakutunnissa Bibee* v. *Kishoree Mohun Roy, I. L. R., 19 Calc., 747,* and *Venkatramayya* v. *Krishnayya, I. L. R.,* [illegible]

[illegible]

BASU v. KUNJA BEHARY SINGH
I. L. R., 27 Calc., 814
4 C. W. N., 818

19. ———— *"Plaint"—Suit filed before period of limitation expired, but stamp duty not paid till afterwards—Court Fees Act, 1870, s. 28—Exclusion of time of proceeding bona fide in Court without jurisdiction.*—Two suits were brought for partition of the property of a deceased by his heirs under the Mahomedan Law—the first, by his widow and six children, in [illegible]

[illegible] stamped [illegible] presented by the widow's children, stated explicitly that the duty payable thereon was included in that already paid on the widow's plaint, which sum correctly represented the duty payable on the footing that the share of each formed a distinct subject-matter. All the plaints were by order placed on the file of the District Munsif's Court. The plaints were at first treated at the [illegible]

LIMITATION ACT, 1877—*continued.*

with a stamp of R10 only. On the 9th November 1887 it was tendered to a Judge for admission, and it then bore a report dated the 7th November by the officer appointed under s. 5 of the Court Fees Act, "report will be made on receipt of record" The Judge made an order, "admit, subject to stamp report," and the memorandum was then received by the office, and the appeal was entered on the register. On the 27th September 1888 the office reported that there was a deficiency in the stamp of R615; on the 9th November the taxing officer ordered that the deficiency should be made good, and on the 8th December 1888 it was made good At the hearing of the appeal a preliminary objection was taken that the appeal had never been validly presented within time, or admitted, and that it could not be heard. *Held* that there was before the Court no valid appeal as to the merits of which the Court could give a decision. BALKARAN RAI *v.* GOBIND NATH TIWARI . . I. L. R., 12 All., 129

30 ———— *Amendment of decree, Application for—Civil Procedure Code, s. 206.*—Under a proper interpretation of the preamble and s 4 of the Limitation Act (XV of 1877), the rule of limitation is confined to the litigants, and is inapplicable to acts which the Court may or has to perform *suo motu* S. 206 of the Civil Procedure

Rakmi, I. L R, 6 Bom, 586, and *Kylasa Goundan* v. *Ramasami Ayyar, I. L R., 4 Mad., 172,* referred to DHAN SINGH *v* BASANT SINGH

[I. L R., 8 All., 519

31. ———— *Amendment of plaint—Civil Procedure Code, 1877, s. 53.*—The plaint in a suit for money charged upon immoveable property

returned for amendment, and having been amended by the insertion of the words "in mouzah S, pergunnah S," after the word "share," was presented again on the 8th January 1879 after such period.

32. ———— *Application, Return of, for amendment.*—Where an application is returned for amendment, the period of limitation counts from the first presentation. CHOWDHRY PURLADH MAHAPATTUR *v.* CHOWDHRY JONARDUN MOHAPATTUR

[6 W. R., Mis., 15

Contra, GOUR MOHUN SURMAH *v.* JUGGERNATH ACHARJEE . . . . 14 W. R., 446

33. ———— *Pauper suit—Civil Procedure Code, s. 308—Calculation of period of limitation.*—Under s. 308 of Act VIII of 1859, and the Limitation Act, 1859, in computing the period of limitation in a pauper suit, the commencement of the suit must be reckoned from the day when the application to sue *in formâ pauperis* was filed, and not from the day the application was admitted. GOLUCKNATH DUTT *v.* SEETARAM GOWER

[W. R., F. B, 53: 1 Ind. Jur., O. S, 66

SEETARAM GOWER *v.* GOLUCKNATH DUTT

[Marsh., 174: 1 Hay, 378

34. ———— *Suit in formâ pauperis—Payment of Court-fees by petitioner—Civil Procedure Code, 1859, ss. 308-310—Date of institution of suit*—Where a person, being at the time a pauper, petitions, under the provisions of Act VIII of 1859, for leave to sue as a pauper, but subsequently, pending an enquiry into his pauperism, obtains funds which enable him to pay the Court-fees, and his petition is allowed upon such payment to be numbered and registered as a plaint, his suit shall be deemed to have been instituted from the date he filed his pauper petition, and limitation runs against him only up to that time. SKINNER *v.* ORDE

[I. L. R, 2 All, 241
L. R., 6 I. A., 126

Reversing the decision of the High Court

[I. L R, 1 All., 230

35. ———— *Explanation—Petition in suit in formâ pauperis—Civil Procedure Code, 1859, s. 308*—*A* put in a petition to sue *in formâ*

upon to give evidence of her pauperism, the case was struck off so far as the application to sue *in formâ pauperis* was concerned At the instance of *A*, the case, however, was again re-opened, and a date fixed for her appearance. Two days prior to this date, but at a time beyond the limit fixed by the Limitation Act, *A* put in a petition asking that the

must be considered as filed, not on the day of filing

pauperis is granted, and the application numbered

LIMITATION ACT, 1877—*continued.*

and registered as a suit. CHUNDER MOHUN ROY *v.* BHUBON MOHINI DABEA . I. L. R., 2 Calc., 389

36. ——— *Application to sue in formâ pauperis—Renewal of application.*—An application to sue as a pauper having been refused on ... limitation, the ... applicant to ... The Judge ... ng he would deliver a written judgment. Before the written judgment was delivered, the applicant offered to pay the usual Court-fees, and asked that the petition might be taken as a plaint filed on the date of the ... d in ... uling ... ld be ... 223

37. ——— *Application for leave to appeal in formâ pauperis—Subsequent appeal in regular form—Payment of Court-fee—Time of presentation of appeal—Retrospective effect.*—Where ...

Court-fee on the regular appeal could not be held to relate back to the memorandum of appeal which accompanied the application for leave to appeal as a ...

I. L. R., [illegible]

38. ——— *Institution of regular suit after refusal of application for leave to sue in formâ pauperis—Civil Procedure Code (1882), ss. 403 and 409—Presentation of plaint.*—When an application for leave to sue as a pauper is refused, and the applicant subsequently brings a suit for ...

leave to sue as a pauper having been granted, the applicant is dispaupered. NARAINI KUAR *v.* MAKHAN LAL . I. L. R., 17 All., 526

39. ——— *Institution of suit after refusal of application for leave to sue as pauper—Extension of time granted for payment of Court-fees—Payment of fees after period of limitation for suit has expired—Presentation of plaint—Civil Procedure Code (1882), ss. 409 and 413.*—On the ...

LIMITATION ACT, 1877—*continued.*

...

have no application. KESHAV RAMCHANDRA *v.* KRISHNARAO VENKATESH I. L. R., 20 Bom., 508

40. ——— *Application for leave to sue in formâ pauperis—Subsequent payment of Court-fees as for a regular suit—Limitation Act, art. 104—Civil Procedure Code (1882), ss. 403 and 413.*—A B applied for leave to sue as a pauper for the recovery of certain dower alleged to be due to her. Upon her right to sue as a pauper being disputed by the persons proposed by her in her applica- ...

deferred dower had expired. *Held* that limitation ...

I. L. R., 17 All., 520, referred to. ... *v.* NANHI BEGUM . I. L. R., 18 All., 206

41. ——— *Petition to appeal in formâ pauperis—Non-payment of stamp in time—* ...

LIMITATION ACT, 1877—*continued.*

memorandum of appeal, but he refused on the ground that it was too late. The plaintiff therefore now

CHUND . . . . I. L. R., 21 Bom., 576

42. ——— *Application to sue in formá pauperis—Refusal of application—Extension of time granted for payment of Court-fee—Payment of Court-fee after period of limitation—Civil Procedure Code (1882), ss. 409, 410, and 413.*—Where an application for permission to sue *in formá pauperis* is rejected, and a full Court-fee is paid for a suit for the same relief, the suit must be considered, for the purposes of limitation, to have

26th November 1890, applied for leave to sue *in formá pauperis* for the recovery of immoveable property. His application was rejected in May 1891, and time was given him to pay the full Court-fee,

sue as a pauper was presented, but only on the payment of the full Court-fee, and it was therefore barred by lapse of time. *Keshav Ramchandra* v. *Krisnarao Venkatesh, I. L R., 20 Bom., 508; Naraini Kuar* v. *Makhan Lal, I. L R., 17 All., 526*, and *Abbasi Begam* v *Nanhi Begam, I L. R., 18 All., 206*, followed *Skinner* v. *Orde, I. L. R., 2 All., 241*, distinguished AUBHOYA CHURN DEY ROY v. BISSESSWARI I. L. R., 24 Calc., 889

43. ——— *Pauper appeal—Appli-*

and a week's time was granted to the appellant to pay the fee. The fee was duly paid, and the appeal was accepted, but when it came on for hearing, it was dismissed as barred by limitation.

LIMITATION ACT, 1877—*continued.*

On second appeal to the High Court,—*Held* (reversing the decree and remanding the case) that the appeal was not barred by limitation. By FARRAN, *C.J.*, on the following grounds:—In the case of appeals, s. 592 of the Civil Procedure Code requires two

rule in s. 413 of the Civil Procedure Code cannot apply to appeals; for, in view of the fact that the

tions must have been in the mind of the Legislature when it enacted the Civil Procedure Code of 1882, as the Limitation Act was then in existence. The District Judge was therefore under no legal obligation to dismiss the appeal when he refused the

BAI FUL v. DESAI MANORBHAI BHAVASSIDAS [I. L. R., 22 Bom., 849

44. ——— *Application for leave to appeal as a pauper—Time of presentation of memorandum of appeal—Consent of the applicant to pay sufficient Court-fee after the statutory period of limitation—Sufficient cause —Limitation Act (XV of 1877), s 5—Civil Procedure Code (Act XIV of 1882), s. 582A.*—A suit was brought *in formá pauperis* on behalf of a minor represented by his next friend in the Court of the Munsif, and it was dismissed under some alleged compromise. An appeal was preferred to the District Judge within time, but the memorandum of appeal was insufficiently stamped. An application was also filed with the

minor offered to pay proper Court-fees on the

LIMITATION ACT, 1877—*continued.*

was out of time,—*Held* that, inasmuch as the appeal was admitted by the District Judge without any objection from the defendant, the case came either

45. ———— and art. 178—*Summons to tax bill of costs—Summons to attend in Cham-*

the Limitation Act for the application has expired. The present application therefore was held to have been made within the meaning of the Limitation Act, not when the summons was signed by the Registrar, but when the matter came before the Judge, which was more than three years from the time when the right to apply accrued KHETTER MOHUN SING *v.* KASSY NATH SETT

[I. L R, 20 Calc., 899

46. ———— *Act XIV of 1859, s. 1—Claim against company being wound up—Commencement of suit*—Where *A* applied to the Court to realize a claim against a company which was being wound up by the Court,—*Held* that he was prosecuting a suit in Court, within the meaning of s 1 of Act XIV of 1859 He commenced his suit when he first sent in his claim to the official liquidator. IN THE MATTER OF ACT XIX OF 1857 AND GANGES STEAM NAVIGATION COMPANY ROBERTSON'S CASE 2 Ind. Jur., N. S, 180

47. ———— *Appeal by prisoner in*

Limitation Act, equivalent to presentation to the Court QUEEN-EMPRESS *v* LINGAYA

[I. L. R., 9 Mad., 258

48. ———— *Applications—Rules of*

DOOLAR ROY . . . . 1 C. L. R., 291

49. ———— *Filing appeal after prescribed time—Removal from file.*—When a petition of appeal has been registered after lapse of the time allowed by law, the Judge has power, on discovery thereof, to reject or to remove it from his file. JAFER HOSSEIN *v.* MAHOMED AMIR

[4 B. L. R., Ap., 103: 13 W. R., 351

———— s 5 (1871, s. 5).

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM

[I. L. R., 2 Calc., 436

LIMITATION ACT, 1877—*continued.*

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—TIME FOR APPEALING.

[I. L. R., 2 Calc., 128

See COURT FEES ACT, 1870, SCH. I, ARTS. 4 AND 5 . I. L. R., 9 Mad., 134

See LETTERS PATENT, HIGH COURT N.-W. P., CL. 27.

[I. L. R., 11 All., 176

See SMALL CAUSE COURT—PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—RE-HEARING . I. L. R., 12 Bom., 408

1. ———— *Exception to section—Special law*—The exceptions contained in s 5 of Act IX of 1871 apply only to cases dealt with under the General Act of Limitation. THIR SING *v* VENKATA RAMIER . I. L. R, 3 Mad., 92

2 ———— *Madras Forest Act (Mad Act V of 1882), ss 14, 39—Period of limitation—Power to excuse delay.*—Delay in preferring an appeal under the Madras Forest Act beyond the period prescribed by s 14 of that Act may be excused under s. 5 of the Limitation Act, 1877. REFERENCE UNDER MADRAS FOREST ACT (V OF 1882) . . . I. L. R., 10 Mad., 210

3. ———— *General Clauses Act (I of 1897), s. 7—Held* that a suit for profits under s. 93 (*h*) of the N-W. P Rent Act (XII of 1881), the period of limitation for the filing of which expired in respect of a portion of the claim on a day when the Court was closed, could not be brought on the day when the Court re-opened, but, so far as that portion was concerned, was barred by limitation, the provisions of the Limitation Act not applying to the N-W. P. Rent Act. MUHAMMAD HUSEN *v* MUZAFFAR HUSEN I. L. R., 21 All, 22

4. ———— *Time during which Court is closed.*—The time that the Courts are closed must be deducted in computing the period of limitation. MANEERUN *v.* LUTEEFUN 3 W. R., 46

Contra RAMASAMY CHETTY *v.* VENKATACHETTAPATY CHETTY . . . 2 Mad., 468

5. ———— *Time expiring when Court*

[2 N. W., 112

AJMUDDIN *v* MATHURADAS GORADHAN DAS

[11 Bom., 206

NARAYAN MANDAL *v.* BENI MADHAB SIRCAR

[4 B. L. R., F. B., 32: 12 W. R., F. B., 21

DABEE RAWOOT *v.* HERAMUN MAHATOON

[8 W. R., 223

6. ———— *Order to pay money—Money paid after due date.*—When an order has been made for payment of money in a suit on a certain date and the Court was closed on that date, a payment made on the following day would be a good

LIMITATION ACT, 1877—*continued.*

payment for the purposes of the order. ARAVAMUDU AYYANGAR v. SAMIYAPPA NADAN
[I. L. R., 21 Mad., 385

See SHOSHEE BHUSAN RUDRO v GOBIND CHUNDER ROY . . . I. L. R., 18 Calc., 231

and PEARY MOHUN AICH v. ANUNDA CHARAN BISWAS . . . I. L. R., 18 Calc., 631

7. ——— *Appeal—Holiday, Time expiring on.*—When the last day for presenting an appeal falls upon a Sunday or close holiday, an additional day is to be allowed for the presentation of the memorandum of appeal. EX-PARTE KRISHNA PADHE
[6 Bom., A. C., 50

MOSURUF ALI CHOWDHRY v JANOKENATH ODHICAREE . . . W. R., 1864, Mis., 40

BISHEN PERKASH NARAIN SINGH v. BABOOA MISSER . . . . . 8 W. R., 73

This section overrules the following cases, decided under the Limitation Act of 1859.—

KHODIE LAL v. BISWASU KUNWAR
[4 B. L. R., A. C., 131 : 13 W. R., 122

RAJKRISTO ROY v DINOBUNDOO SURMA
[B. L. R., Sup Vol., 360
3 W. R., S. C. C. Ref., 5

DEWAN ALI v. MUNSOOR ALI . 11 W. R, 259

KUDOMESSUREE DOSSEE v. EMAM ALI
[20 W. R., 167

COLLIS v TARINEE CHURN SINGH
[3 W. R., 210

HOLEE RAM DOSS v MIHEE RAM GOGOOEE
[6 W. R., 39

8. ——— *Suit on promissory note on demand—Closing of Court.*—A suit on a promissory note payable on demand, dated the 14th November 1867, was filed on 14th November 1870, that being the first day on which the Court was open after the Durga Puja holidays · the 13th November was a Sunday *Held* the suit was not barred. ABDUL ALI v. TARACHAND GHOSE
[6 B. L. R., 292

S. C on appeal. TARACHAND GHOSE v. ABDUL ALI . . 8 B. L. R., 24 : 16 W. R., O. C, 1

MUHTAB v RAM DYAL . 3 Agra, 319

9. ——— cl. (a)—*Time expiring when Court is closed.*—Where a suit was filed in the Munsif's Court on the day on which the Court re-

Cause Court on the day on which that Court re-opened ABHOYA CHURN CHUCKERBUTTY v. GOUR MOHUN DUTT . . . . 24 W. R., 26

10. ——— *Holiday—Act XI of 1865, s. 21*—By s. 21, Act XI of 1865, notice of application for a new trial must be filed within seven days from the date of the decision. When the decree was made on 6th November, and the Court was closed on 12th, 13th, 14th, and 15th,—*Held* an application filed on the 16th was in time. GIRIJA BHUSAN HOLDAR v AKHAY NIKARI
[5 B. L. R., Ap., 57 note : 13 W. R., 105

11. ——— *Time for institution of suit expiring when Court is closed.*—Held that, where the period of limitation prescribed for a suit expired when the Court was closed for a vacation, and the

cation on the
ed on a later
did re-open,
CHAND v.
1 All., 263

12. ——— *Adjournment of Court with office opened during adjournment for reception of plaints, etc.*—Where a District Court was adjourned for two months, but the notification stated

adjournment within the meaning of s 5 of the Limitation Act, 1877, so as to allow an appellant to present his appeal on the day the Court re-opened after the adjournment, the appeal time having expired during the adjournment NACHIYAPPA MUDALI v. AYYASAMI AYYAR
[I. L. R., 5 Mad., 189

13. ——— *Time for presenting appeal expiring during the vacation*—Where the period of limitation for the filing of an appeal has

Court has power to receive and file a memorandum of appeal on that day. KING v. KING
[I. L. R., 6 Bom., 487

14. ——— *Computation of period of limitation—Holiday.*—On the 1[illegible]th April 1883 (corresponding with the 1st Bysack 1290), the plaintiff instituted a suit to recover money due on a simple unregistered bond, dated 8th Bysack 1286, and re-

15. ——— *Suit for an account from agent—Courts being closed.*—Although a suit to recover moneys or obtain papers or accounts from an

the re-opening of the Court. GOLAP CHAND NOWLUCKHA v. KRISHTO CHUNDER DASS BISWAS
[I. L. R, 5 Calc., 314

LIMITATION ACT, 1877—*continued.*

16. ——— *Time for presenting plaint—Beng. Act VIII of 1869, s. 31.*—The provisions of s 5 of the Limitation Act (XV of 1877) apply equally to suits under the Bengal Rent Act (Bengal Act VIII of 1869). In a suit for rent, where it appeared that a deposit had been made in Court

for an authorized holiday, but that the plaint had been filed on the first day the Court re-opened,—*Held* that the provisions of s 5 of the Limitation Act (XV of 1877) applied to such cases, and that consequently the suit was not barred. *Golap Chand Nowluckha v. Krishto Chunder Das Biswas, I. L. R., 5 Calc, 314,* and *Hossein Ally v Donzelle, I L R., 5 Calc., 906,* followed. *Purran Chunder Ghose v. Mutty Lall Ghose Johiri, I. L. R., 4 Calc, 50,* dissented from KHOSHELAL MAHTON v GUNESH DUTT *alias* NANHOO SINGH

[I. L. R., 7 Calc., 690

17. ——— *Suit to compel registration—Registration Act, III of 1877, s 77.*—The provisions of s. 5 of Act XV of 1877 apply to suits instituted under the provisions of s 77 of the Registration Act (III of 1877). NIJABUTOOLLA v. WAZIR ALI

[I L. R., 8 Calc., 910: 10 C L R., 333

18. ——— *Suit under s. 77 of Registration Act (III of 1877)—Filing of suit on reopening of Court where limitation expires on a day when it is closed.*—When the period of limit-

re-opens, is barred. APPA RAU SANAYI ASWA RAU v. KRISHNAMURTHI I. L. R., 20 Mad., 249

See VEERAMMA v. ABBIAH

[I. L. R., 18 Mad., 99

19. ——— *Civil Procedure Code, 1877, s. 561—Time for filing objection—Holiday*—Where the time for filing objections under s. 561 of the Civil Procedure Code expired on a day when

20. ——— *Civil Procedure Code, s. 561, Objection under.*—S. 5 of Act XV of 1877 does not apply to an objection under s 561 of the Procedure Code. KALLY PROSUNNO BISWAS v. MUNGALA DASSEE. I. L. R., 9 Calc., 631

21. ——— *Objections to decree—Civil Procedure Code, 1877, s 561—Extension of time.*—The seven days within which a notice of

to extend the period DEGAMBER MOZUMDAR v. KALLYNATH ROY

[I. L. R., 7 Calc., 654: 9 C. L. R., 265

22. ——— *Objections taken under s 348, Civil Procedure Code, 1859—Withdrawal of appeal—Ground for admitting appeal after time*—The circumstance that a respondent who

High Court may consider and determine upon the sufficiency of the reasons which a Judge has given for admitting an appeal after the lapse of the period limited for that purpose by law. *Mowri Bewa v. Soorendra Nath Roy, 2 B L. R., A C., 184 10 W. R., 178,* followed. SURBHAI DAYALJI v RAGHUNATHJI VASANJI . 10 Bom., 397

23. ——— *Time expiring when Court is closed—Execution of decree—Transfer of decree for execution*—Where parties are prevented from doing a thing in Court on a particular day not by any act of their own, but by the act of the Court itself, they are entitled to do it at the first subsequent opportunity Where therefore, after previous attempts to execute a decree, dated 7th September 1877, an application for transfer of the decree under s. 223 of the Civil Procedure Code was made and granted on the 2nd September

laid down in s. 5 of the Limitation Act upon the broad principle above stated *Shooshee Bhusan Rudro v. Govind Chunder Roy, I L R., 18 Calc., 231,* applied in principle PEARY MOHUN AICH v. ANUNDA CHARAN BISWAS

[I. L. R., 18 Calc., 631

24. ——— *Admission of, after*

MUTU SAWMY

[4 B. L R, Ap., 24: 13 W. R., 215

25. ——— *Calculation of period allowed for—Reasonable ground for enlarging time—Review.*—The plaintiff, against whom a decree

LIMITATION ACT, 1877—*continued.*

was not shown for not having presented the appeal

26. ——— *Appeal preferred after time, Admission of—Ground for delay.*—In a case

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LUCKHNATH

27. ——— *Delay in appealing—*

28. ——— *Appeal admitted out of time—Review pending—Time excluded—Review*

an appeal presented out of time VASUDEVA *v.* CHUNIASAMI . I. L. R., 7 Mad., 584

29. ——— *Time for preferring—*

PORESH NATH ROY *v.* GOPAL KRISTO DEB [15 W. R., 61

30. ——— *Date from which time for appeal runs where an application for review is*

LIMITATION ACT, 1877—*continued.*

31. ——— *Delay in filing—Grounds for delay.*—Delay in preferring an appeal should be

AMBA NASHYA *v.* GAJAN SHUTAR [2 B. L. R., Ap., 35: 11 W. R., 130

32. ——— *Time for appealing—Alteration in law.*—An appeal will not be allowed after the time for appealing has expired, merely because

33. ——— *Sufficient cause for admis-*

that there was sufficient cause for not presenting it within such period. ZAIBULNISSA BIBI *v.* KULSUM BIBI . I. L. R., 1 All., 250

34. ——— *Suits under Act X of*

ground that its pendency in a Court that had no jurisdiction "was sufficient cause for delay." MODHOOSOODUN MOJOOMDAR *v.* BROJONATH KOOND CHOWDHRY . 5 W. R., Act X, 44

But *see* KALEE KISHORE PAUL *v.* MONEE RAM SINGH . 5 W. R., Act X, 46

35. ——— *Admission of appeal after*

LIMITATION ACT, 1877—*continued.*

36. ——— *Power of Division Court*

hearing, on the ground that the reasons assigned for admitting it were erroneous or inadequate. DUBEY SAHAI *v.* GANESHI LAL . I. L. R., 1 All., 34

37. ——— *Appeal filed after time—Order under cl (b), s 5 of the Limitation Act (IX of 1871).*—An order made *ex-parte* under cl (b), s. 5 of the Limitation Act of 1871, permitting an

CHUNDER SIRCAR . . I. L. R., 5 Calc., 1

38. ——— *Appeal admitted after time by District Court—Power of subordinate*

39. ——— *Admission of, when out of time, by District Judge—Transfer of same to Subordinate Judge for hearing—Power of Subordinate Judge to dismiss such appeal.*—Where an

40. ——— *Admission of appeal out of time—Ex-parte order set aside at hearing*—An order made *ex-parte*, under s. 5 of the Limitation

LIMITATION ACT, 1877—*continued.*

Act, 1877, admitting an appeal after the period prescribed therefor, may be set aside on proper cause being shown by the Court which made it. VENKATRAYUDU *v* NAGADU I. L. R., 9 Mad., 450

See MOSHAULLAH *v.* AHMEDULLAH [I. L. R., 13 Calc, 78

41. ——— *Appeal filed beyond time*

42. ——— *Appeal—Admission after time—"Sufficient cause"—Poverty—Purdahnashin.*—On the 14th February 1884, the High Court dismissed an application of the 22nd March 1883, by a purdahnashin lady, for leave to appeal *in formâ pauperis* from a decree, dated the 16th September 1882, the application, after giving credit for 86 days spent in obtaining the necessary papers, being out of time by 73 days On the 16th August

(dissenting), that the circumstances

LIMITATION ACT, 1877—*continued.*

R., *8 All.*, *475*, referred to. HUSAINI BEGUM *v.* COLLECTOR OF MUZAFFARNAGAR

[I. L. R., 9 All., 11

MUZAFFARNAGAR

43.——— *"Sufficient cause" for not presenting appeal within time—Admission of appeal—Discretion of Court.*—In a suit for ejectment instituted in the Revenue Court under s. 93 (*b*) of the N.-W. P. Rent Act (XII of 1881), the Court gave judgment decreeing the claim on the 15th September 1884. The value of the subject-matter exceeded

for revision of the first Court's decree. The proceedings before the Board lasted until the 24th April,

mitted the appeal, and, reversing the first Court's decision, dismissed the claim. *Held* on appeal by

limitation prescribed therefor. *Per* EDGE, *C.J.*, that under the circumstances above stated, he would not himself have held that the defendant had shown "sufficient cause," within the meaning of s 5, for the admission of the appeal, but that the Court ought not to interfere with the discretion of the Judge when he had applied his mind to the subject-

44.——— *Guardian and minor—Decree against minor—Neglect of guardian to appeal—Leave to appeal granted to minor after attaining majority—Sufficient cause—Limitation Act, s. 14.*—One *J* died in 1886, and by his will

LIMITATION ACT, 1877—*continued.*

against the decree of the 1st October 1887. He sub-

SANDAS NATHA *v.* LADKAVAHOO

[I. L. R., 20 Bom., 104

45.——— *Sufficient cause—Civil Procedure Code (1882), s. 108—Ex-parte decree—Limitation Act, s. 14.*—In a suit for possession of certain lands, after the defendants had filed their

but he was actually present in Court on that day. The petitioner, on the 24th February 1894, filed an

to appeals. *Held* also that this was not a case in which an application could properly be made under

LIMITATION ACT, 1877—*continued.*

at the time when the original decree was passed, and of which he did not choose to avail himself, and that this was not a sufficient cause for not presenting the

MATANGINI DASSI . I. L. R., 23 Calc., 820

46. —— and s. 14—*Ground for*

47. ———— *Review—Application for review—Sufficient cause for delay—Pendency of second appeal—Ignorance of effect of judgment.*—*G* obtained a decree against *M* in the Court of the Subordinate Judge of Ahmedabad for the refund of a certain sum of money alleged to have been illegally levied by *B* as inamdar for local fund cess due for

48. ———— *Review, Exclusion of time taken up with—Practice.*—The mere presentation of an application for review where it is not shown that the grounds therefor are reasonable and proper, is not a sufficient reason for admitting an appeal after the

LIMITATION ACT, 1877—*continued.*

period of limitation prescribed for such appeal has passed ASHANULLA *v.* COLLECTOR OF DACCA

[I. L. R., 15 Calc., 242

occupied. GOVINDA *v* BHANDARI

[I. L. R., 14 Mad., 81

50. ———— *Application insufficiently stamped—Sufficient cause for admitting application after period prescribed—Application for review—Court Fees Act (VII of 1870), ss. 6, 28.*—On the 26th January 1889, an application was presented to the Munsarim of the District Judge's Court for review of a judgment passed on the 19th December 1888 The application was insufficiently

made good On the 26th May, the Judge admitted the application, on the applicant paying the Court-fee payable on an application presented on or after ninety days from the date of the decree *Held* that s 6 and the first paragraph of s 28 of the Court Fees Act (VII of 1870) were applicable, that there was no mistake or inadvertence within the meaning of the second paragraph of s. 28, that the Judge had no power under the circumstances to admit the application as one presented after ninety days from the date of the decree, that there was no presentation within ninety days of an application which could have been received; that no sufficient cause had been shown, within the meaning of s 5 of the Limitation Act, for not making the application within ninety days, and that the application was consequently barred by limitation, and ought to have been rejected MUNRO *v.* CAWNPORE MUNICIPAL BOARD

[I. L. R , 12 All., 57

51. ———— *Application for review—*

had sufficient cause for not presenting the appeal within the prescribed period. The plaintiff obtained a decree for possession of certain land in the Court of first instance. This decree was reversed by the Appellate Court on the 28th October 1890. The

LIMITATION ACT, 1877—*continued.*

of the Limitation Act for extending the period of limitation. Huro Chunder Roy v. *Surnamoyi, I. L. R., 13 Calc., 266,* dissented from. BECHI v. AHSAN-ULLAH KHAN . I. L. R., 12 All., 461

66. ———— *Leave to appeal after*

tirely Suit B was filed by them against *G*, one of

mortgagees and that they refused to give it up The plaintiffs submitted that, under the mortgage, no charge was created, save upon *G's* individual interest in the estate, and they prayed for a declaration as to the extent of the mortgage, for an order for possession, for an account, etc., etc Suit A was heard and decided on the 15th August 1889, and after argument, the Court of first instance, construing the will, held that the fourth defendant, *G*, was entitled absolutely to certain property situate at the Girgaum Back Road in Bombay. Immediately after the said decree was made, suit B was called on for hearing before the same Judge. As the questions raised in both suits were the same, a decree in this suit was passed at once, without argument, in accordance with the construction put upon the will in suit A. Against the decree in suit A, *V* (one of the defendants therein) appealed, and, on the 27th February 1890, the Appeal Court reversed the decree of the Court below, and held that *G* was not entitled to an absolute estate in the abovementioned property, but was entitled only to be paid the income thereof for his life The plaintiffs in the present suit, being executors and not personally interested, had taken no steps to appeal from the decree of the 15th August. As soon, however, as the decree in suit A was reversed, they proposed to have the decree in suit B amended, so as to be in accordance with the construction put upon their testator's will by the Appeal

satisfied, they should have appealed within the proper time. There was nothing in their position as executors to entitle them to any special consideration. THUCKER VUSSONJI MOWJI v. CANJI PURSHUT [I. L. R., 14 Bom., 365

67. ———— *"Sufficient cause"—Decree in suit for redemption—Appeal by mortgagee—Cross-objections filed by the mortgagors—Withdrawal of the appeal by the mortgagee—Application by mortgagors for extension of time to appeal.*—On the 1st March 1886, the plaintiffs (the mortgagors), obtained a redemption decree against the defendant (mortgagee), whereby it was ordered that, upon payment by the plaintiffs of R649-11-0 to the defendant, the mortgaged property should be redeemed. On the 19th April 1886, the defendant appealed to the High Court. On the 17th December 1886, the

cross-objection heard, afforded no sufficient reason for enlarging the time for the cross-appeal which he might have presented. CHUDASAMA MANABHAI MADARSANG v. ISHWARGAR BUDHAGAR [I. L. R., 16 Bom., 249

68. ———— *Appeal by defendants—Objections to decree filed by plaintiff under s 561 of the Civil Procedure Code (1882)—Subsequent withdrawal of appeal—Application by plaintiff for leave to appeal—Sufficient cause for delay in filing appe*

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appellants
would not proceed with the appeal. The respondents then applied to be allowed to appeal, alleging that they had from the first intended to appeal, but had not done so, only because the other side had filed an appeal. That being so, they had merely filed cross-objections. *Held* that the application should be

DAS PRANJIVANDAS v. JADAVAHOO [I. L. R., 23 Bom., 692

69. ———— and s. 12—*Appeal, Filing of, out of time—Period required for obtaining copy—"Sufficient cause" for delay.*—Where a decree was passed on the 3rd December and signed on the following day and application for a copy was

LIMITATION ACT, 1877—*continued.*

not made until the 10th, and then with insufficient folios, and on the 11th the officer in charge made a

that the Judge in the Court below was in error in throwing out the appeal on the ground that it was out of time, and that under the circumstances he ... the ... *Dey,* ... *nd* v. ... *Chandra Roy* v *Surnamoyi, I. L R., 13 Calc., 266,* referred to DULALI BEWA *v.* SARODA KINKAR PAULIT [3 C. W. N., 55

———— s. 5A—*Delay in presenting appeal—Discretionary power of Court to excuse delay—Limitation Act, s 5A and s. 14.*—S 5A of the Limitation Act (XV of 1877) is, like s 14, a mandatory section, but does not exclude the discretionary power of the Court, under s 5, to excuse delay in presenting an appeal. SHRIMANT SAGAJIRAO KHANDERAV *v.* SMITH . I. L. R., 20 Bom., 736

———— s. 6 (1871, s. 6).

1. ———— *Act IX of 1871, s. 6—Rules for computing limitation.*—Though by s 6 of the Limitation Act, 1877, nothing in that Act affects the period of limitation prescribed by any special or ...

...JEE . I. L. R., 5 Calc., 110 : 4 C. L. R., 371

2. ———— *Act IX of 1871, s. 6.*—S 6 of Act IX of 1871 and s. 6 of Act XV of 1877 compared GOLAP CHAND NOWLUCKHA *v.* KRISHTO CHUNDER DASS BISWAS [I. L. R., 5 Calc., 314

3. ———— *Special law of limitation.*

... I. L. R., 5 Mad., 52

4. ———— *Construction of s. 6*—

[I. L. R., 12 Mad., 1

Munsifs from trying any suit cognizable by them unless (*inter alia*) the cause of action has arisen within twelve years previous to the institution of such suit, does not exclude such suits from the operation of the Limitation Act, 1877. ERAJABI *v.* MAYAN . . . I. L. R., 9 Mad., 118

———— s. 7 (1871, s. 7; 1859, ss. 11, 12).

See LUNATIC . I. L. R., 19 Bom., 135

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES [I. L. R., 9 All., 411

1. ———— *Disqualification to sue.*—No other cause of disqualification than those mentioned in the Limitation Act is admissible to save limitation RAM KISHORE ACHARJE CHOWDHRY *v.* LUKHEE DEBEE CHOWDHRAIN W. R., 1864, 290

2. ———— *Voluntary absence after attaining majority.*—The plaintiff's voluntary absence abroad after attaining majority does not bar the operation of Act XIV of 1859 VENKATA SUBBA PATTAR *v.* GIRI AMMAL . . 2 Mad., 113

3. ———— *Ignorance of accrual of* ...

4. ———— *Absence by reason of transportation.*—During the plaintiff's absence by reason of transportation, the defendant took possession of land which previously belonged to him as a tenant, and the landlord allowed the defendant to hold as his tenant He held possession for more than twelve years. In a suit by the plaintiff on his return to turn the defendant out of possession, in which the landlord was made a defendant, *Held* that the suit was barred, there being no exception in the Limitation Act with regard to plaintiffs who are beyond the sea in consequence of transportation. DOMUN *v.* SUDUNKOOLAH [1 B. L. R., S. N., 25 : 10 W. R., 253

5. ———— *Adopted son—Disability.*—An adopted son, after he attains majority, is under no legal "disability" within the meaning of ...

6. ———— He must bring his suit to set aside illegal acts of his adopting mother within three years of his attaining majority. KISHEN MOHUN KHOOND *v.* MUDDUN MOHUN TEWAREE [5 W. R., 32

7. ———— *Minors—Law of the party.*—The term "minors" used in s. 12 of Act XIV of 1859 must be construed according to the law of the party in the case. HARI MAHADAJI JOSHI *v.* VASUDEV MORESHVAR JOSHI [2 Bom., 344 : 2nd Ed., 325

LIMITATION ACT, 1877—*continued.*

8. ————— *Age of majority—Minor.*

KALEE DOSS CHATTERJEE *v.* BEHAREE LOLL MOOKERJEE . . . . 2 W. R., 305

HURRIS CHUNDER NAG *v.* ABBAS ALI [5 W. R., 204

vided the suit is brought within three years of the time of the disqualification ceasing. GUZ BEHARY SINGH *v.* WASHUN . . W. R., 1864, 302

11. ————— *Minority—Effect of section.*—The effect of it is to provide a distinct period of limitation applicable to every case in which but

12. ————— *Disability of minority.*—In computing the period of limitation under s. 11, the period of the plaintiff's legal disability by reason of minority cannot be deducted. VIRA PILLAI *v.* MURUGA MUTTAYAN . . 2 Mad., 340

13. ————— *Suit by mother and guar-*

14. ————— *Suit by minor through guardian.*—In a suit by a minor through her guardian for the recovery of property sold more than three years before the plaint was filed, plaintiff was held to be entitled to rely on the provisions of s. 11 of Act XIV of 1859, and to be therefore not barred by limitation. RAM GHOSE *v.* GREEDHUR GHOSE [14 W. R., 429

15. ————— *Effect of guardianship on minor's disability.*—The fact that a minor is for a time represented by a guardian does not remove the disability of the minor. ANANTHARAMA AYYAN *v.* KARUPPANAN KALINGARAYEN [I. L. R., 4 Mad., 119

16. ————— *Minor's right to sue—Disability.*—A suit by a guardian on behalf of a minor is that of the minor, and is governed by the law of limitation applicable to the minor. KHODABUX *v.* BUDREE NARAIN SINGH [I. L. R., 7 Calc., 137: 8 C. L. R., 306

SUFFURCONISA BIBEE *v.* NOORUL HOSSEIN [17 W. R., 419

17. ————— *Minor's right to sue—Application by guardian for minor.*—Where a

18. ————— *Registration Act (III of 1877), s. 77—Suit by infant to enforce registra-*

a conveyance having been instituted more than thirty days after refusal on the part of a Registrar to register, it is barred by limitation. VEERAMMA *v.* ABBIAH [I. L. R., 18 Mad., 99

See APPA RAU SANAYI ASWAR RAU *v.* KRISHNAMURTHI . . . I. L. R., 20 Mad., 349

LUCHMUN SINGH *v.* MIRIAM. LUCHMUN SINGH *v.* KAZIM ALI KHAN . . . 5 W. R., 219

POORUN SINGH *v.* KASHEENATH SINGH [6 W. R., 20

SREE PERSHAD *v.* RAJGOOROO TREPUMBUKHNATH DEO . . . 10 W. R., 44

But there is now no distinction in that respect between rent suits and other suits.

20. ————— and s. 6—*Beng. Act VIII of 1869—Suit for arrears of rent—Disability of minority.*—In a suit under Bengal Act VIII of 1869 for arrears of rent, which accrued during minority, the plaintiff is not entitled to a fresh period of limitation under ss. 6 and 7 of the Limitation Act, 1877. *Dinonath Panday v. Roghoonath Panday, 5 W. R., Act X, 41; Behari Lall Mookerjee v. Mongolanath Mookerjee, I. L. R., 5 Calc., 110; Golap Chand Nowluckka v. Krishto Chunder Das Biswas, I. L. R., 5 Calc., 314;*

LIMITATION ACT, 1877—*continued.*

Khoshelal Mahton v *Ganesh Dutt, I. L. R., 7 Calc., 690*, and *Phoolbas Koonwur* v. *Lalla Jogeshur Sahoy, L. R., 3 I. A., 7 I. L. R., 1 Calc., 226*, explained. *Khetter Mohun Chuckerbutty* v. *Dinabashy Shaha, I L R., 10 Calc, 265*, distinguished. GIRIJA NATH ROY v PATANI BIBEE

[I. L. R., 17 Calc., 263

21. ———— *Act XIV of 1859, ss. 11 and 12—Civil Procedure Code, 1859, s. 246—Dis-*

Bahadur Khan v. *Collector of Bareilly, 13 B. L. R., 292*, distinguished, on the ground that it was decided on an Act of a very special nature PHOOLBAS KOONWUR v LALLA JOGESHUR SAHOY

[I. L. R., 1 Calc., 226 : 25 W. R., 285
L. R., 3 I. A., 7

HURO SOONDUREE CHOWDHRAIN v ANUNDNATH ROY CHOWDHRY . . 3 W. R., 8

And the Act of 1877 now expressly applies to such cases, as also to cases of execution of decrees to which it was held the provisions of the Act of 1859 did not apply.

See ROTTY RUMUN OOPADHYA v. CHUNDEE BINODE OOPADHYA . . 5 W. R., Mis., 10

CHUNDER COOMAR ROY v SHURUT SOONDUREE DEBIA . . . 6 W. R., Mis., 37

TARUCKNATH MOOKERJEE v POORNOCHUNDER CHATTERJEE 8 W R., 137

MUTHOORA DOSS v SHUMBHOO DUTT

[20 W R., 53

22. ———— *Minority—Minor inherit-*

[1 Ind. Jur., N. S, 31
4 W. R, Mis., 21

23. ———— *Suit by guardian of minor—Application by minor for execution of decree.*—The guardian and administratrix of her minor sons obtained a money-decree against the defendants in August 1874, and on the 22nd February 1875 applied for its execution The application was struck

HAM . . . I. L. R., 7 Bom., 179

24. ———— *Execution of decree—Minor plaintiff—Application for execution by guardian.*—A plaintiff, who has obtained a decree

DEBY DABEE

[I. L. R., 9 Calc., 181 : 11 C. L. R., 34

25. ———— *Minor plaintiff—Application for execution by guardian—Limitation Act (XV of 1877), art 179*—A obtained a decree on the 22nd July 1881, and made several applications for execution After the death of *A*, his heirs, who were minors, made another application for execution through their mother, who was their certificated guardian, on the 25th of March 1889. No further steps were taken during the next three years, but, on the 1st of April 1892, the minors through their mother again applied for execution. *Held* that the application for execution was not barred by s 4 of the Limitation Act, read with art. 179 of the second schedule, but that the operation of the Act was arrested by s 7 Art. 179 provides several points of time from which the period of three years shall begin to run, and for the purposes of the Limitation Act the period which begins from each point is a separate period, and if the person entitled is under a disability at the time when any one of such periods commences, the operation of the Act is

[I. L R., 20 Calc., 714

26 ———— *Minor, Application by, and on behalf of, during minority—Pending suit,*

adult. S. 7 of the Limitation Act applies not only when a minor makes an application himself after he

NARAIN SINGH . . . . 3 C. W. N., 24

27. ———— *Person under disability—Minor—Application by guardian on minor's behalf.*—Where the person entitled to make an appli-

LIMITATION ACT, 1877—*continued.*

operation of limitation. *Lolit Mohun Misser* v. *Janokynath Roy, I. L. R., 20 Calc., 714,* and *Phoolbas Koonwur* v. *Lalla Jogeshur Sahoy, I. L. R., 1 Calc., 226,* referred to. NORENDRA NATH PAHARI v. BHUPENDRA NARAIN ROY I. L. R., 23 Calc., 374

28. ———— *Civil Procedure Code*

to Her Majesty in Council and presented an appeal within six months of the date when he attained majority. On an application under Civil Procedure Code, s. 598,—*Held* that the application was barred by limitation. THURAI RAJAH v. JAINILABDEEN ROWTHAN . . . I. L. R., 18 Mad., 484

29. ———— *Joint decree-holders—Minor, Right of, to execute whole decree when remedy of major joint decree-holder is barred.*—In execution of a decree for possession of certain lands and for mesne profits, dated the 15th August 1878, possession having been obtained in August 1880, two decree-holders, one of whom was a minor, applied on the 4th April 1882 for ascertainment of the amount of such mesne profits. Upon that application the ameen was directed to ascertain the amount due, but after repeated reminders had been sent him, and no report being submitted, the execution-case was struck off the file on the 9th October 1882. The minor judgment-creditor having attained his majority on the 17th April 1885, an application was made by both decree-holders for execution of the decree by ascertainment of the amount of mesne profits, and

[I. L. R., 14 Calc., 50

30. ———— and s. 8—*Disability of minority—Execution of decree—Joint decree-holders.*—A member of an undivided Hindu family and his two minor brothers (who sued by him as their next friend) brought a suit for partition of family property against their father and joined as defen-

the plaintiffs in the above suit. No application for the execution of the decree was made by either the first or second plaintiff; but the third plaintiff, having attained his majority in June 1881, applied for execution in April 1881; his application was opposed by two of the defendants. The District Judge made an order granting his application in respect of the one quarter share to which he was declared to be entitled under the decree. *Held* that

either one decree-holder and he is a minor, or in which all the joint decree holders are minors, or labour under some other disability It does not seem to be intended to apply to cases in which the minor's interest can be protected by joint decree-holders, who are also interested in the subject-matter of the decree. SESHAN v. RAJAGOPALA. RAJAGOPALA v. RAMANADA . . . I. L. R., 13 Mad., 236

31. —

—*Civil*

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and died in May 1887. *S* attained majority on the 15th December 1891, and, on the 24th July 1894, applied for execution, no application having been made since November 1886 *Held* that the application was not barred by limitation. Under s. 231

the benefit

1877), and

e years of

attaining majority. S. 8 of the Limitation Act

32. ———— and s. 8—*Minority.*—S 8 of the Limitation Act, 1877, applies only to those cases in which the act of the adult joint creditor is *per se* a valid discharge. *Seshan* v. *Raja-*

LIMITATION ACT, 1877—*continued.*

Nath Pahari v. Bhupendra Narain Roy, I. L. R., 23 Calc., 374, followed ZAMIR HASAN v. SUNDAR [I. L. R., 22 All., 199

33. ———— *Period of successive minorities.*—In a suit instituted before Act XIV of 1859 came into operation, the periods of successive minorities might be deducted in reckoning the term of limitation. AMIRTOLAL BOSE v. RAJONEEKANT MITTER . . 15 B. L. R., 10 : 23 W. R., 214 [L. R., 2 I. A., 113

34. ———— *Act XIV of 1859, ss. 11 and 12—Right of minor to sue by guardian.*—The benefit of ss 11 and 12 of Act XIV of 1859 is not limited to the period when the disability of minority has ceased, but applies also to the period during which the disability continues, and therefore, during the latter period, it is open to the minor to sue by his guardian. PHOOLBAS KOONWUR v. LALLA JOGESHUR SAHOY

[I. L. R., 1 Calc., 226 : 25 W. R., 285 L. R., 3 I. A., 7

S. C. in lower Court, SADABURT PERSHAD SAHOO v. LATF ALI KHAN PHOOLBAS KOOER v. LALL JUGESSUR SAHAI. BIKRAMJIT LALL v. PHOOLBAS KOOER. RAM DHYAN KOONWAR v. PHOOLBAS KOOER . . . . 14 W. R., 339

See RAM AUTAR v. DHUNEE RAM [1 N. W., Ed. 1873, 122

and BAROO MULL v. CHUJJOO MULL 4 N. W., 125

35. ———— *"Representative"—Purchaser from minor.*—*Quære*—Can the term "representative" in s 11, Act XIV of 1859, be extended so as to include any purchaser from the minor suing in his lifetime? Whatever may have been the effect of s 11 of Act XIV of 1859 as to extending the privilege given to a minor to his representatives, s. 7, the corresponding section of Act IX of 1871, limits the privileges to the minor himself and his representative after his death, and therefore a purchaser from a minor cannot claim the benefit of that section. MAHOMED ARSAD CHOWDHRY v. YAKOOB ALLY . . 15 B. L. R., 357 : 24 W. R., 181

36. ———— *Suit by minor on attaining majority.*—Suit to recover money advanced on a bond granted by the plaintiffs' father, on the allegation that the money advanced was the plaintiffs', who were minors at the time. In the absence of proof of [illegible]

[illegible] sentatives of their father, and that s. 11 prevented them from deriving any advantage from their minority in computing the period of limitation. NOSHEERAM ROY v. SHUSHEE BHOOSHUN ROY [5 W. R., 169

MUKOOTNATH v. JUGWUNT LALL . 3 Agra, 389

TARUCK CHUNDER SEN v. DOORGA CHURN SEN [20 W. R., 2

37. ———— *Minority—Disability—Guardian.*—Where the father of a minor lent on account a sum of money to the defendant, and died without having received back the money, and the account was continued with the defendant by the mother and guardian of the minor, and the balance was struck during the minority of the infant, it was held that the cause of action arose at the time such [illegible]

conceded to a minor on account of legal disability is not affected by the fact that during his minority he is represented by a guardian. MAHIPATRAV CHANDRARAV v. KENSUK ANANDRAV SHET MARVADI [4 Bom., A. C., 199

38. ———— *Suspension of right of suit for disability.*—Limitation begins to run against a mother on her succeeding to a family estate as the heir of her son and under no disability, and cannot be stopped by any subsequent disability under s 11. A dispossession by a stranger to a family of a portion of the family estate is only one cause of [illegible]

to postpone again the period of limitation which has begun to run against the family. GOBIND COOMAR CHOWDRY v. HURO CHUNDER CHOWDHRY [7 W. R., 134

39. ———— *Disability of heir—Cause of action.*—Under s 11, Act XIV of 1859, the subsequent disability of an heir will not save a suit instituted after a lapse of twelve years from the date of cause of action when such cause of action arose during the lifetime of the ancestor. MOHABAT ALI v. ALI MAHOMED KULAL [3 B. L. R., Ap., 80 : 12 W. R., 1

40. ———— *Minority, Omission to sue within three years after.*—The mere fact of a plaintiff not suing within three years of his attaining majority will not, in cases where Act XIV of 1859 allows a general limitation of twelve years, bar his suit if brought within twelve years of the time when the cause of action accrued. RADHAMOHUN GOWEE v. MOHESH CHUNDER KOTWAL . 7 W. R., 3

41. ———— *Disability of heir—Cause of action.*—*T, R,* and *N,* three of the heirs of one *H,* sued the defendant in 1865 for possession of certain property left by *H.* The defence was that the defendant had purchased the property from *H* in 1851, and had ever since been in possession. The lower Court found that the suit was barred as [illegible]

LIMITATION ACT, 1877—*continued.*

and *N* depended not on the question whether three years from their majority had elapsed or not before the institution of the suit, but whether twelve years having elapsed from the cause of action in 1857, limitation operated as a bar. If *H* had, at the time of his death, been out of possession for twelve years, then *R* and *N* would not be entitled to the extra three years after attaining their majority; but if he had died within twelve years, then the limitation should be calculated from the date of the cause of action to the date of his death, and then three years be allowed to *R* and *N* after they came of age. NUR MOHAMMED *v.* THAKOOR BIBI

[1 B. L. R., S. N., 18

42. ———— *Disability of heir—Cause of action.—A* sued to set aside a deed of sale of certain immoveable property, which she claimed as the property of her husband. The deed of sale had been executed by her husband's mother during her husband's minority. Her husband attained his majority more than twelve years after the deed of sale, and died about a year afterwards, leaving her, *A*, a minor. *A* alleged that she had attained her majority within three years of this suit. *Held* the suit was barred under s 11, Act XIV of 1859. The husband could have sued after attaining his majority, and the subsequent disqualification of the plaintiff *A* could not extend the time ABHAYA DURGA *v.* HARI KRISHNA GOPE

[1 B. L. R., S. N., 21: 10 W. R., 285

43. ———— *Suit to set aside alienation of ancestral property.*—A suit to set aside alienation of ancestral property, where a period twelve *years from the date of such alienation had elapsed* during plaintiff's minority, may be brought within *three years (not twelve)* from the time of his attaining majority CHOWDHRY ZUHOORUL HUQ *v.* BAGOO JAN . . . 11 W. R., 532

Affirmed on review, BAGOO JAN *v.* CHOWDHRY ZUHOORUL HUQ . . 13 W. R., 69

44 ———— *Suit to recover immoveable family property* ...

the latter extends to three years or more and expires within three years from the date of attainment of majority, the intention is that the late minor should have the full three years. But when the period of limitation prescribed is less than three years, as in art 12, and the minor has that period from the date of his majority, the prescribed period is not to be enlarged to three years. SUBRAMANYA PANDYA CHOKKA TALAVAR *v.* SIVA SUBRAMANYA PILLAI

[I. L. R., 17 Mad., 316

LIMITATION ACT, 1877—*continued.*

45. ———— and art. 129—*Cause of action—Minority*—In a suit by the reversionary heirs of one *S* to set aside an adoption alleged to have been made with the permission of *S*, the plaintiffs alleged that *S* died in 1844, that the adoption took place in 1845; and that they attained their majority respectively on the 26th September 1871 and the 20th December 1872. The suit was instituted on 16th June 1873. *Held* that, the adoption having taken place after the death of *S*, the cause of action arose at the date of the adoption, as provided by art. 129, sch. II, Act IX of 1871, and that the plain ... cause of ... of s 7, ... sue within three years of attaining their majority. SIDDHESSUR DUTT *v.* SHAM CHAND NUNDUN

[15 B. L. R., 9 note: 23 W. R., 285

See MRINMOYEE DABEA *v.* BHOOBUNMOYEE DABEA

[15 B. L. R., 1; 23 W. R., 42

46. ———— and art. 120—*Suit for declaration that alienation by Hindu widow is void—Former suit by a former reversioner barred* ...

the right to sue of the plaintiff or of some one through whom he claims The "period of limitation" mentioned in s 7 means the period of limitation for the suit which the plaintiff or some one through whom he claims is entitled to institute. *Siddhessur Dutt* v. *Sham Chand Nundun, 15 B. L. R, 9 note: 23 W. R., 285, Mrino Moyee Dabia* v. *Bhooban Moyee Debia, 15 B. L. R., 1: 23 W. R., 42; Gobind Coomar Chowdhry* v. *Huro Chunder Chowdhry, 7 W. R., 134,* and *Gobind Chandra Sarma Mazoomdar* v. *Anand Mohan Sarma Mazoomdar, 2 B. L. R., A. C., 313,* referred to. BHAGWANTA *v.* SUKHI . I. L. R., 22 All., 33

47. ———— and art. 44—*Minority, Disability of—Alienation by guardian of property of minor—Cause of action.—K R* died in 1844, leaving a widow, *O T*, and a minor son, *G D*. In 1847 *O T* executed in favour of the defendant a ...

of *G D*, the suit was not barred, it having been brought within three years after the plaintiff attained his majority; if made by her as a Hindu widow, the suit was still not barred, the cause of action not arising until her death, when the plaintiff was a

LIMITATION ACT, 1877—*continued.*

minor. PROSUNNA NATH ROY CHOWDRY v. AFZOLONNESSA BEGUM
[I. L. R., 4 Calc., 523; 3 C. L. R., 391

48. ——————— *General principle of law as to the disability of minors—Provisions of the Civil Procedure Code (Act XIV of 1882)—Minor represented by a guardian* —S. 7 of the Limitation Act, strictly speaking, only applies to cases dealt with by that Act itself. The provisions of the Civil

SHIV v. VISAJI RAGHUNATH
[I. L. R., 16 Bom., 536

49. ——————— *Minority—Right to sue,—Personal exemption—Assignment by minor* —Under s. 7 of the Limitation Act, a minor has, in respect of a cause of action accruing during his minority, a right to sue at any time within three years of attaining his majority, but if during his minority, or if after attaining his majority and within three years thereof, such person assigns all

RUDRA KANT SURMA SIRCAR v. NOBOKISHORE SURMA BISWAS. SAMOD ALI v. MAHOMED KASSIM
[I. L. R., 9 Calc., 663: 12 C. L. R., 269

50. ——————— *Disability of minority—Suit by representative of minor in interest.*—Where a person whose right to sue is limited (say) to twelve years labours under a disability such as is specified in Act IX of 1871, s. 7, and the disability continues up to his death, which occurs within those twelve years, leaving some (say eight) years to run, his

51. ——————— *Malabar law—Compromise of doubtful claims by adult members of a tarwad—Suit by junior members to rescind the compromise* —In 1878, the senior members of a Malabar tarwad, in *bonâ fide* compromise of certain doubtful claims, executed an instrument conveying away certain land of the tarwad. In 1891, certain junior members of that tarwad, including several minors, sued to recover possession of the land in question. Others of the junior members of the tarwad had attained majority more than three years before the suit, and had not impugned the validity of the ... ndants. 1878 ... IOIDIN
[I. L. R., 18 Mad., 38

52. ——————— and sch. II, art. 165—

place is not barred by limitation by reason of Limitation Act, 1877, s. 7. RATNAM AYYAR v. KRISHNA DOSS VITAL DOSS . I. L. R., 21 Mad., 494

53. ——————— and ss 9, 19—*Minority of plaintiff—General Clauses Act (I of 1868), s 3, cl 2—Acknowledgment* —Suit to recover principal and interest due on a registered bond executed by defendants in favour of the plaintiff's father. The ... incipal ... plain- ... made

gives a new period of limitation, not an extension of the old period, and the plaintiff being a minor at the

YAR . I. L. R., 18 Mad., 130

This section does not apply to suits for pre-emption. Under the Acts of 1859 and 1871, it was decided that ss 11 and 12 of the Act of 1859 did not apply to pre-emption suits. MURTAZA v. LALLA NURSING SUHAE . . . 7 W. R., 86

and the cases of JUNGOO LALL v. LALA ALUM CHAND
[7 W. R., 279

and RAJA RAM v. BANSI I. L. R., 1 All., 207

the former under the Act of 1859, and the latter under the Act of 1871, decided that the sections relating to the disability of minority in those Acts did apply to such suits

——————s. 8 (1871, s. 8).

See MADRAS REVENUE RECOVERY ACT, s. 59 I. L. R., 17 Mad., 189

1. ——————— *Joint Hindu family—Debt due to family—Joint creditors.*—The manager of a joint Hindu family, of which *S* was a minor member, lent money on behalf of the family to *K*. The time limited by law for a suit for such money was three years from the date of the loan. During that period there were several members of the family who were ... sued ... law ... giving ... *Held* ... e of ... lity, yet as more than one member of the family could have given a discharge to *K* without *S*'s concurrence, the provisions of s. 8 of the Limitation Act were not

LIMITATION ACT, 1877—*continued.*

and *N* depended not on the question whether three years from their majority had elapsed or not before the institution of the suit, but whether twelve years having elapsed from the cause of action in 1857, limitation operated as a bar. If *H* had, at the time of his death, been out of possession for twelve years, then *R* and *N* would not be entitled to the extra three years after attaining their majority; but if he had died within twelve years, then the limitation should be calculated from the date of the cause of action to the date of his death, and then three years be allowed to *R* and *N* after they came of age. NUR MOHAMMED *v.* THAKOOR BIBI

[1 B. L. R., S. N., 18

been executed by her husband's mother during her husband's minority. Her husband attained his majority more than twelve years after the deed of

could not extend the time. ABHAYA DURGA *v.* HARI KRISHNA GOPE

[1 B. L. R., S. N., 21: 10 W. R., 285

43. ———— *Suit to set aside alienation of ancestral property.*—A suit to set aside alienation of ancestral property, where a period twelve years from the date of such alienation had elapsed during plaintiff's minority, may be brought within three years (not twelve) from the time of his attaining majority. CHOWDHRY ZUHOORUL HUQ *v.* BAGOO JAN . . . . 11 W. R., 532

Affirmed on review, BAGOO JAN *v.* CHOWDHRY ZUHOORUL HUQ . . . 13 W. R., 69

44. ———— *Suit to recover immoveable family property unlawfully alienated during plaintiff's minority—Limitation Act, sch. II, art. 12—Minor, Suit by, on attaining majority to set aside alienation by father of impartible property.*—Where a suit is brought to set aside a sale of immoveable family property unlawfully alienated during the plaintiff's minority, it must be instituted within one year of the plaintiff's attaining his majority under sch. II, art. 12, of the Limitation Act. S. 7 of that Act must be read together with each article in sch. II, and when the period prescribed by the latter extends to three years or more and expires within three years from the date of attainment of majority, the intention is that the late minor should have the full three years. But when the period of limitation prescribed is less than three years, as in art. 12, and the minor has that period from the date of his majority, the prescribed period is not to be enlarged to three years. SUBRAMANYA PANDYA CHOKKA TALAVAR *v.* SIVA SUBRAMANYA PILLAI

[I. L. R., 17 Mad., 316

LIMITATION ACT, 1877—*continued.*

45. ———— and art. 129—*Cause of action—Minority.*—In a suit by the reversionary heirs of one *S* to set aside an adoption alleged to have been made with the permission of *S*, the plaintiffs alleged that *S* died in 1844; that the adoption took place in 1845; and that they attained their majority respectively on the 26th September 1871 and the 20th December 1872. The suit was instituted on 16th June 1873. *Held* that, the adoption having taken place after the death of *S*, the cause of action arose at the date of the adoption, as provided by art. 129, sch. II, Act IX of 1871; and that the plaintiffs, not having been in existence when the cause of action arose, were not entitled to the benefit of s. 7, Act IX of 1871, so as to enable them to sue within three years of attaining their majority. SIDDHESSUR DUTT *v.* SHAM CHAND NUNDUN

[15 B. L. R., 9 note: 23 W. R., 285

See MRINMOYEE DABEA *v.* BHOOBUNMOYEE DABEA

[15 B. L. R., 1: 23 W. R., 42

46. ———— and art. 120—*Suit for declaration that alienation by Hindu widow is void—Former suit by a former reversioner barred by lapse of time, Effect of, or subsequent suit by, minor.*—A minor plaintiff instituting a suit which falls within art. 120 of the second schedule of the Limitation Act, 1877, is not excluded from the benefit of s. 7, merely because the right of some other person through whom he does not claim to sue for similar relief has become time-barred. The "right to sue" mentioned in the third column of art. 120 means [illegible] some one through [illegible] limitation" [illegible] of limitation [illegible] e through [illegible] iddhessur [illegible] ., 9 note: [illegible] Bhoobun Moyee Debia, 15 B. L. R., 1: 23 W. R., 42; Gobind Coomar Chowdhry v. Huro Chunder Chowdhry, 7 W. R., 134, and Gobind Chandra Sarma Mazoomdar v. Anand Mohan Sarma Mazoomdar, 2 B. L. R., A. C., 313, referred to. BHAGWANTA *v.* SUKHI . I. L. R., 22 All., 33

47. ———— and art. 44—*Minority, Disability of—Alienation by guardian of property of minor—Cause of action.*—*K R* died in 1844, leaving a widow, *O T*, and a minor son, *G D*. In 1847 *O T* executed in favour of the defendant a [illegible]

of *G D*, the suit was not barred, it having been [illegible] plaintiff attained [illegible] Hindu widow, [illegible] se of action not [illegible] plaintiff was a

LIMITATION ACT, 1877—*continued.*

minor. PROSANNA NATH ROY CHOWDRY v. AFZOLONNESSA BEGUM

[I. L. R., 4 Calc., 523; 3 C. L. R., 391

48. ——————— *General principle of law as to the disability of minors—Provisions of the Civil Procedure Code (Act XIV of 1882)—Minor represented by a guardian*—S. 7 of the Limitation Act, strictly speaking, only applies to cases dealt with by that Act itself The provisions of the Civil Procedure Code must, in the absence of anything to the contrary, be deemed to be subject to the general principle of law as to the disability of minors, which is that time does not run against a minor, and the circumstance that a minor has been represented by a guardian does not affect the question. MORO SADASHIV v VISAJI RAGHUNATH

[I. L. R., 16 Bom., 536

49. ——————— *Minority—Right to sue,—Personal exemption—Assignment by minor*—Under s 7 of the Limitation Act, a minor has, in respect of a cause of action accruing during his minority, a right to sue at any time within three years of attaining his majority, but if during his minority, or if after attaining his majority and within three years thereof, such person assigns all his rights and interests to a third party, who is *sui juris*, the latter cannot claim the exemptions accorded to the minor by s. 7 of the Limitation Act, but is subject to the ordinary law of limitation governing suits in which relief of the same nature is claimed. RUDRA KANT SURMA SIRCAR v NOBOKISHORE SURMA BISWAS SAMOD ALI v MAHOMED KASSIM

[I. L. R., 9 Calc., 663: 12 C. L. R., 269

50. ——————— *Disability of minority—Suit by representative of minor in interest.*—Where a person whose right to sue is limited (say) to twelve years labours under a disability such as is specified in Act IX of 1871, s 7, and the disability continues up to his death, which occurs within those twelve years, leaving some (say eight) years to run, his representative in interest has only the remainder of the period of limitation (i e, eight years in the case

51. ——————— *Malabar law—Compromise of doubtful claims by adult members of a tarwad—Suit by junior members to rescind the compromise.*—In 1878, the senior members of a Malabar tarwad, in *bond fide* compromise of certain doubtful claims, executed an instrument conveying away certain land of the tarwad. In 1891, certain junior members of that tarwad, including several minors, sued to recover possession of the land in question. Others of the junior members of the tarwad had attained majority more than three years before the suit, and had not impugned the validity of the

[I. L. R., 18 Mad., 38

LIMITATION ACT, 1877—*continued.*

52. ——————— and sch. II, art. 165—

53. ——————— and ss 9, 19—*Minority of plaintiff—General Clauses Act (I of 1868), s 3, cl. 2—Acknowledgment.*—Suit to recover principal and interest due on a registered bond executed by defendants in favour of the plaintiff's father The

This section does not apply to suits for pre-emption. Under the Acts of 1859 and 1871, it was decided that ss 11 and 12 of the Act of 1859 did not apply to pre-emption suits. MURTAZA v LALLA NURSING SURAE . 7 W. R., 86

and the cases of JUNGOO LALL v LALA ALUM CHAND [7 W. R., 279

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the former under the Act of 1859, and the latter under the Act of 1871, decided that the sections relating to the disability of minority in those Acts did apply to such suits

————s. 8 (1871, s. 8).

See MADRAS REVENUE RECOVERY ACT, s 59 . . I. L. R., 17 Mad., 189

1. ——————— *Joint Hindu family—Debt due to family—Joint creditors.*—The manager of

that, although during such period *S* was one of several joint creditors, who was under a disability, yet as more than one member of the family could have given a discharge to *K* without *S*'s concurrence, the provisions of s 8 of the Limitation Act were not

LIMITATION ACT, 1877—*continued.*

applicable; his suit was therefore barred by limitation. SURJU PRASAD SINGH *v.* KHWAHISH ALI

[I. L. R., 4 All., 512

2. ———— *Cause of action, Accrual of, during minority—Minor's right to sue after attaining majority.*—The plaintiff, having attained majority on the 11th March 1882, sued the defendant, within three years from that date, upon a bond obtained in 1872 by his mother and guardian in the plaintiff's name alone. The defendant contended that, the plaintiff's brother, who was capable of giving a valid discharge to his debtors, having failed to sue within proper time, the suit was barred On refer-

NATH RAMCHANDRA *v.* WAMAN BRAHMADEB

[I. L. R., 10 Bom., 241

3. ———— *Joint decree-holders—Disability of minority—Civil Procedure Code, 1882, ss 231, 258—Execution of decree.*—S. 8 of the Limitation Act does not appear to include execution-creditors, and the classes of persons contemplated by it are joint creditors or joint claimants, one of

operate as a valid discharge. S. 8 of the Limitation Act applies only to those cases in which the act of the adult joint owner is *per se* a valid discharge. SESHAN *v.* RAJAGOPALA. RAJAGOPALA *v.* RAMANADA

[I. L. R., 13 Mad., 236

4. ———— and s. 7—*Disability of one of two joint claimants—Transfer of Property Act (IV of 1882), s 99—Usufructuary mortgage—Suit to set aside sale in "execution" of decree.*—In a suit by the two sons of a usufructuary mortgagor (deceased) to set aside the sale of the mortgaged premises, which had taken place in execution of a

second plaintiff alone, who had not attained his majority three years before the suit.

BAPAYYA . . . I. L. R., 16 Mad., 436

———— s. 9.

See s 13 . I. L. R., 6 Bom., 103
[I. L. R., 4 All., 530
I. L. R., 8 Bom., 561

LIMITATION ACT, 1877—*continued.*

———— s. 10 (1871, s. 10; 1859, s. 2).

See DEBTOR AND CREDITOR.

[I. L. R., 25 Calc., 642

See TRUST . . I. L. R., 18 Bom., 551

1. ———— *Trustee—Benamidar*—A benami transaction does not create the relation of trustee and *cestui que* trust A benamidar is not a trustee within the meaning of s. 2. Act XIV of 1859. UMA SUNDARI DASI *v.* DWARKANATH ROY

[2 B. L. R., A. C., 284: 11 W. R., 72

2. ———— *Trustee—Mortgagee in possession.*—A mortgagee in possession after the mortgage has been satisfied is not a trustee for the mortgagor within the meaning of s. 2 of Act XIV of 1859. LALL DOSS *v.* JAMAL ALI

[B. L. R., Sup. Vol., 901: 9 W. R., 187

3. ———— *Trust—Master and servant.*—*A* advanced certain sums of money on different occasions to his servant, *B*, for the purpose of erecting buildings, etc., for *A*. In a suit by *A* for recovery of the balance, *B* raised the defence that the suit was barred so far as it related to sums advanced more than three years before the suit. *Held* that the matter was of the nature of a trust, and limitation would not apply. NARAYAN DAS *v.* MAHARAJA OF BURDWAN

[1 B. L. R., S. N., 11: 10 W. R., 174

4. ———— *Trustee—Mahomedan lady's estate.*—In a suit by the purchaser of a Mahomedan lady's share in her father's property against her brother, it was held that as the property, while in the hands of the brother, was in the hands of a trustee, and not in adverse possession, limitation could not apply. BACHARAM CHOWDRY *v.* MAHTAB BEEBEE

[W. R., 1864, 377

5. ———— *Trust—Position, as regards*

father's death, and at the time the solehnama was executed. *Held*, on the question of limitation, that it was not to be inferred that the sons, by reason of their having managed their late father's estate, should be regarded as trustees, at the time of the execution of the solehnama, for the daughters; and therefore s 10 of Act XV of 1877 was inapplicable So that, as regards the property included in the solehnama, a suit brought in 1882 by the daughters would be barred by time. MAHOMED ABDUL KADIR *v.* AMTAL KARIM BANU

[I. L. R., 16 Calc., 161
L. R., 15 I. A., 220

6. ———— *Trustee—Depository—Immoveable property made over to defendant to sell and pay to plaintiff—Limitation Act, 1859, cl. 15, s 1*—Where immoveable property was given into the

LIMITATION ACT, 1877—*continued.*

possession of the defendant, under an order of a Revenue officer, which directed the defendant to sell the crops and, after payment of Government dues, to account for the profits to the plaintiff on his claiming it, it was held that the defendant was not a depository, but a trustee of the property. VITAL VISHVANATH PRABHU *v.* RAM CHANDRA SADASHIV KIRKIRE . . . 7 Bom., A. C., 149

7. ———— *Trustee—Possession of property not for person's own use.*—Where property is vested in a person partly for charitable purposes and partly for the benefit of others, and he is bound to use it for such purposes and not for his own advantage, he is a trustee within the meaning of Act XIV of 1859, s. 2. ALLEH AHMED *v.* NUSEEDUN [21 W. R., 415

8. ———— *Trustee—Idol.*—In a suit by the representatives of a shebait to recover possession of property of an idol from the assignees of a purchaser, on the ground that the purchaser was a mere trustee for the idol, and the defendants had notice of this or might have known it by reasonable enquiry,—

within s

against a t

KUNWARI

S. C. on appeal to the Privy Council, BROJOSOONDERY DEBIA *v.* LUCHMEE KOONWAREE [15 B. L. R., 176 note

9. ———— *Suit against dharmakarta*

priated certain temple funds held by him, sued to recover a certain sum alleged to have been misappropriated. *Held* that the defendant was a person

the suit might be treated as a suit for that purpose SETHU *v.* SUBRAMANYA [I. L. R., 11 Mad., 274

10. ———— *Persons holding endowed property in trust.*—No limitation applies in the case of persons holding endowed property in trust and under accountability, but no indulgence should be shown to a plaintiff who brings forward claims so stale and antiquated that difficulty arises in finding any reliable evidence whereby to decide on their validity and extent BUZL ROHIM *v.* LUTAFUT HOSSEIN KHODEJOONISSA BIBEE *v.* LUTAFUT HOSSEIN . . W. R., 1864, 171

11. ———— *Suit to establish right to*

LIMITATION ACT, 1877—*continued.*

12. ———— *Specific trust—Suit to remove trustee.*—In a suit brought for the purpose of

was barred by limitation *Held* that the suit was one

13. ———— *Suit for possession against agent in charge of endowed property.*—A suit for possession against an agent or deputy in charge of endowed property was not barred by limitation according to s 2, Act XIV of 1859. GHOLAM NUJJUFF *v.* TOOSSOODDUCK HOSSEIN [1 W. R., 126

14. ———— *Religious endowments—Gosami muth—Grant by the head of the muth to his brother for his maintenance—Suit by a successor to recover the land.*—In 1544 a village was granted to the head of a gosami muth to be enjoyed from generation to generation and the deed of grant provided that the grantee was "to improve the muth, maintain the charity and be happy." The office of head of the muth was hereditary in the grantee's family. In 1866, an inam title-deed was issued to the then head of the muth, whereby the village

and 1882 were put in evidence to show what the

the head of the muth for the time being to make grants to his brothers or younger sons for their maintenance In 1842, the father of the present plaintiff, being then the head of the muth, granted certain lands in the village above referred to to his younger brother, the deed of grant being in terms absolute. The grantee died about thirty years before the suit, and the lands in question came into the possession of his widow (defendant No. 1) and a mortgagee from her (defendant No 2) respectively. In 1863, the plaintiff's father placed certain other lands in possession of defendant No. 3, who paid rent therefor and received pottahs for some years from the plaintiff. In a suit by the plaintiff for possession of the lands in the possession of the defendants, it was pleaded, *inter alia*, that the grant of 1843 was binding on him, and that defendant No 3 had a right of permanent occupancy. *Held* that s 10 of the Limitation Act was applicable, and the suit was not barred by limitation SATHIANAMA BHARATI *v.* SARAVANABAGI AMMAL I. L. R., 18 Mad., 266

15. ———— *Trustee — Constructive trust—Court of Wards taking possession of estate*

LIMITATION ACT, 1877—*continued.*

under order of Government—Mad. Reg, V of 1804—Mad. Reg. VII of 1808—The Government, by directing the Court of Wards to take charge of an estate during the minority of the next claimants, does not constitute itself a trustee for the rightful owner. The wrongful invasion or continuance in possession of a stranger, whether with or without knowledge of the infirmity of his title, will not make the wrong-doer a constructive trustee unless he has been admitted into possession by a trustee. PALKONDA ZAMINDAR (ZAMINDAR OF PALKONDA) *v.* SECRETARY OF STATE FOR INDIA [I. L. R., 5 Mad., 91

16. ———— *Co-sharers — Trustees.*—The non-receipt of a share of the profits of an estate is no cause of action between shareholders from which limitation runs. SHIBO SUNDARI DASI *v.* KALI CHURAN RAI . W. R., 1864, 296

17. ———— *Trustee — Express trustee—Absent co-sharer.*—S 10 of the Limitation Act, 1877 has reference to express trustee ...

had taken, or obtained from the Government, possession of *S*'s land, attested a village paper, in which it was stated that, if *S* returned and reimbursed him, he should be entitled to his land. Sixty years after *S* abandoned his village, *B* as the representative of *S* sued the representative of *H* for such land, alleging that it had vested in *H* in trust to surrender it to *S* or his heirs on demand. As evidence of such trust, *B* relied on the village paper mentioned above, and on the village administration paper of 1862, in which it was stated that absent co-sharers might recover their shares on payment of the arrears of Government revenue due by them. *Held* that such documents did not prove any express trust within the meaning of s 10 of the Limitation Act, 1877, and the suit was therefore barred by limitation BARKAT *v.* DAULAT . I. L. R., 4 All., 187

18. ———— *Trust — Absconding co-sharer—Purchaser from remaining co-sharer, Right of.*—Where a clause of the wajib-ul-urz of a village stated in general terms that absconders from such village should receive back their property on their return, and certain persons who absconded from the village before the wajib-ul-urz was framed sued to enforce such clause against the purchaser of their property from the co-sharer who had taken possession of it on their absconding, and who was no party to the wajib-ul-urz, alleging that their property had vested in such co-sharer in trust for them,—*Held* that, assuming the trust to be established, as the purchaser had purchased in good faith for value and without notice of the trust, and was not the representative of such co-sharer within the meaning of s. 10 of Act IX of 1871, and had been more than twelve years in possession, the suit was barred by limitation. PIAREY LAL *v.* SALIGA [I. L. R., 2 All., 394

KAMAL SINGH *v.* BATUM FATIMA [I. L. R., 2 All, 460

19. ———— *Trustee — Executor.*—An executor, who by the will is made an express trustee for certain purposes, is, as to the undisposed of residue, a trustee within the scope of s. 2 of Act XIV of 1859, for the heir or heirs of the testator. LALLUBHAI BAPUBHAI *v.* MANKUVARBAI [I. L. R., 2 Bom, 388

20. ———— *Suit by representatives of testator against defaulting executor.*—Where no steps had been taken ...

might not follow their testator's assets under s. 2. IN RE PALMER'S ESTATE . . . Cor., 68

21. ———— ...

22. ———— *Specific property — Executors—Trustees—Suit for account.*—The firm of *C, T & Co.* acted as agents for the trustees of *G D.* It appeared from entries in their books, headed "Account of the Trustees for *G D,*" that the firm had in their hands R12,453 to the credit of the trustees in 1848, at which time the firm stopped payment. *D T*, a member of the firm of *C, T & Co.*, and *W S* were the trustees In the earlier accounts the names of *D T* and *W S* both appeared; in the ...

1846 *D T* died, leaving *G* and *T* the surviving partners of the firm, the executors of his will. *W S* survived *D T*. In 1867, the representative of *G D* brought a suit for an account against *G* and *T*, as the executors of *D T*. *Held*, upon the facts, that there was no proof that any specific property, the subject of the trust, had come to the hands of *G* and *T* as executors of *D T*, and any other claim was barred by s. 2, Act XIV of 1859. MICHAEL *v.* GORDON . . . . 2 Ind. Jur., N. S, 271

23. ———— *Trust—Charge of debts by testator.*—A charge of debts generally by a testator upon his property, or any part of it, will not affect ...

LIMITATION ACT, 1877—*continued.*

their legal liabilities. But the case is different when particular property is given upon trust to pay a particular debt or debts. In such a case the trustee has a new duty—not the ordinary duty of an executor to pay debts generally out of property generally, but a duty to apply a particular property to secure a particular debt, and there is a trust within the meaning of s 10 of the Limitation Act. ANUND MOYE DABI *v* GRISH CHUNDER MITI
[I. L. R., 7 Calc., 772: 9 C. L. R., 327

24. ———— *Suit to recover property subject to a trust not carried out.*—S 2 of Act XIV of 1859 is applicable to a suit for the recovery of property the possession of which had been transferred upon trust, and in respect of which there had been a disaffirmance of the trust, and a refusal to fulfil the conditions of the trust SOOMRUN RAI *v* MAHESH DUTT . . . . 4 N. W., 33

25. ———— *Trustee — Claim against rival trustee* —A claim to vindicate the personal right of a trustee to the possession of immoveable property against another person claiming such right in the same character is not governed by s. 10 of the Limitation Act, 1877. KARIMSHAH *v.* NATTAN BIVI
[I. L. R., 7 Mad., 417

26. ———— *Suit between co-trustees —Injunction to restrain some of trustees from excluding others from management of temple— Breach of trust, Liability for loss occasioned by.*— The plaintiffs and defendants, together with one *S* who died in 1884, were trustees of a temple, having been appointed by the committee under Act XX of 1863. For some years before his death *S* was left in exclusive management. Subsequently the defendants were in sole management of the temple until 1891, when the plaintiffs brought the present suit charging that the defendants had excluded them from the right of management, and claiming that they should make good sums lost to the institution by reason of breaches of trust alleged to have been committed by them Some of the breaches of trust took place before 1884 Of the others, which took place subsequently, some consisted in improper dealings with the temple property to the detriment of the temple and to the advantage of certain relatives of the defendants. The plaintiffs also asked for an injunction to restrain the defendants from excluding them from management *Held* (1) that in the absence of evidence of an absolute denial by the defendants of the plaintiffs' right to act as trustees the suit for an injunction was not barred by limitation; (2) that the suit could not be regarded as a suit by the beneficiaries, and was not within the operation of the Limitation Act, s 10; (3) that the suit was not maintainable in respect of breaches of trust committed in the lifetime of the deceased manager, as being to that extent barred by limitation, and also for the

defendants were liable to make good the loss occasioned by any breach of trust committed within six years of the date when the suit was instituted even in the absence of fraud, and that, in estimating such loss, prospective loss should be assessed. RANGA PAI *v.* BABA . . I. L. R., 20 Mad., 398

27. ———— *Suit against Secretary of*

found as a fact that Government had been in possession of the rights to which the suit related for upwards of fifty years, and during that time no acknowledgment of their title to khotship had been made either to plaintiffs or their predecessors *Held* that the claim was time-barred, Government not

that section. SECRETARY OF STATE FOR INDIA *v.* SAKHARAM BAPUJI NAIK I. L. R., 24 Bom., 23

28. ———— *Express trust—Suit against trustees to charge property with trust*— A suit against trustees for the purpose of charging certain property with the trusts declared by the author of the trust in respect of that property and for an account is a suit to follow property, and as such is not barred by any lapse of time HURRO COOMAREE DOSSEE *v.* TARINI CHURN BYSACK
[I. L. R., 8 Calc., 766

29. ———— *Trust for specific purpose—Implied trusts—Adverse possession.*—The words of s 10 of the Limitation Act of 1871 mean that when a trust has been created expressly for some specific purpose or object, and property has become

beneficially interested in that trust may bring a suit against such trustee to enforce that trust at any distance of time without being barred by the law of limitation The language of the section is specially

S. C in lower Court . . 2 C. L. R., 112

30. ———— and arts. 118, 133, 134 —"*Trust for a specific purpose.*"—*Per* GARTH, *C.J.*—The words "in trust for a specific purpose" are intended to apply to trusts created for some defined or particular purpose or object, as distinguished from trusts of a general nature such as the law impresses

LIMITATION ACT, 1877—*continued.*

expression for trusts of the nature and character mentioned in arts. 133 and 134 of the Limitation Act, namely, such as attach to property conveyed in trust, deposited, pawned, or mortgaged. GREENDER CHUNDER GHOSH *v.* MACKINTOSH

[I. L. R., 4 Calc., 897: 4 C. L. R., 193

31. ——————— *Trustee and cestui que trust—Will—Void gift—Residue—Gift of interest—Share of rents and profits—Corpus of estate.*—*A* by his last will and testament gave his property to trustees, partly in trust for religious and other purposes, and partly to pay thereout to certain persons and their heirs for ever certain annuities, being fixed portions of the net profits of a certain estate called the Hurro estate, which amounted to R3,150. *A* died in November 1863. On the 11th of August 1879, the heir of one of the annuitants instituted a suit claiming a share under the will, and asking for a partition of that share. The plaintiff alleged, besides, that certain of the trusts and provisions in the will were invalid in law, that consequently a large portion of the testator's property remained undisposed of at his death, and she claimed a share of this residue as one of the heirs of the testator. *Held* that, under the circumstances, the gift of the share of the rents and profits amounted to a gift of a share in the corpus of the estate, and that, in respect of that portion of the plaintiff's claim, the suit was not barred by limitation. *Kherodemoney Dossee* v. *Doorgamoney Dossee, I. L. R., 4 Calc., 455, Greender Chunder Ghosh* v. *Mackintosh, I. L. R., 4 Calc., 897; Anund Moye Dabi* v. *Grish Chunder Myti, I. L. R., 7 Calc., 772, Mannox* v. *Greener, L. R., 14 Eq., 456,* and *Sookmoy Chunder Dass* v. *Monohari Dassee, I. L. R., 7 Calc., 269,* cited. Where an estate is given by will to trustees for religious and other purposes, some of which are invalid or fail, the heirs of the testato[illegible] the pc[illegible] bring [illegible] properi[illegible] HEMANGINI DASI *v.* NOBIN CHAND GHOSE

[I. L. R., 8 Calc., 788: 11 C. L. R., 370

32. ——————— *Trustee for specific purposes—Will, Construction of—Void clause in will and consequent intestacy—Suit by heir against executor as trustee for specific purposes.*—*G* died without issue in 1854. By his will he appointed three executors, and after making certain bequests he directed as follows. "After all the above matters shall have been settled, whatever property of mine may remain, that remaining property shall be disposed of in a righteous manner, in a pious and charitable way, as may appear advisable to all my three executors. It shall be disposed of in such manner that people may speak well of me, and that all my three heirs may acquire great fame. The last surviving executor (the brother's widow) died in 1868, leaving a will, whereby she appointed four executors, and confirmed and continued the provisions of *G*'s will. In 1886 *C*, one of *G*'s heirs, assigned all his interest in *G*'s estate to the plaintiff, who in 1887 filed this suit for administration. He contended that the above claim in the will was void for uncertainty; that there was therefore an intestacy as to the residue of the estate; and that the executors held such residue in trust for *G*'s heirs within the meaning of s. 10 of the *Limitation Act (XV of 1877)*; and that the suit was therefore not barred. *Held* that s. 10 of the Limitation Act did not apply, and that the suit was barred by Limitation. The executors of *G* were no doubt trustees, and for some specific purposes property became vested in them under the will, but with regard to the residue there was no trust declared and no direction given to distribute it among the heirs-at-law. In the absence of such a trust or direction, the executors could not be held to be express trustees, or *trustees for a specific purpose,* and *it is to* such trustees alone that the section applies. NANALAL LALLUBHOY *v.* HARLOCHAND JAGUSHA

[I. L. R., 14 Bom., 476

33. ——————— *Express trust.*—Where the property became vested in the defendants for specific purposes; and, although it was no longer in their hands, the money could be traced to the hands of the trustees, and the losses were caused by their misconduct and improper dealing with it,—*Held* [illegible]

34. ——————— and art. 62—*Trust for specific purpose—Money received.*—*R* sued his father and brother *A* for partition of the family [illegible]

35. ——————— *Allegation of holding* [illegible]

an impartible zamindari, on the death of the zamindar, leaving minor sons, of whom the eldest was afterwards recognized as heir and received possession on attaining full age. Upon a subsequent adjudication of forfeiture against him under Regulation VII of 1808, the Government obtained possession of the zamindari. *Held* that the Government was not placed in the [illegible] had become v[illegible] the above sect[illegible] operation of t[illegible] 1877, which [illegible]

LIMITATION ACT, 1877—*continued.*

the sons, alleging title to the zimindari. VIZIARAMARAZU *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL

[I. L. R., 8 Mad., 525 : L. R., 12 I. A., 120

36. ———— and arts. 118, 123, and 145—*Limitation of suit relating to property held in trust.*—A suit, in order to fall within Act IX of 1871, s. 10, excepting suits against trustees from limitation must be brought for the purpose of recovering the trust property for the benefit of the

personal right to manage an endowment dedicated to religious purposes, there being no question whether or not the property was being applied to such purposes by the manager in possession, the above section was held inapplicable. The possession of the defendant having been adverse for more than twelve years,—*Held* that the suit might fall within art. 123 or 145 of the second schedule of Act IX of 1871, in force when the suit was brought. If it fell within neither of the above, it would be barred under art. 118. BALWANT RAO *v.* PURAN MAL I. L. R., 6 All., 1

S. C. BALWANT RAO BISHWANT CHANDRA CHOR *v.* PURAN MAL CHAUBE . L. R., 10 I. A., 90

37. ———— *Trust—Suit by representative of settlor against trustee on failure of the object of a trust to recover the trust money for herself.*—S. 10 of Act XV of 1877 does not apply to a suit brought on failure of the object of a trust to recover for the plaintiff's own use, and not for the purposes of the trust, the trust money remaining in the hands of the trustee. *Balwant Rao v. Puran Mal, I. L. R., 6 All., 1 L. R., 10 I. A., 90,* followed JASODA BIBI *v.* PARMANAND I. L. R., 16 All., 258

38. ———— *Trust—Resulting trust—*

first instance, and incurred expenses in conducting

his share, to have an account taken of the profits, and to recover his share of them with future mesne profits and costs. *Held* that, under the above circumstances, there was a resulting trust in favour of the plaintiff, and the defendant became liable to account to him for his share, but, inasmuch as there was no express trust, and the property did not become vested in trust for a specific purpose within the meaning of s. 10 of the Limitation Act, and the suit was not brought for the purpose of following such trust property in the hands of a

LIMITATION ACT, 1877—*continued.*

trustee, within the meaning of the section, such suit was not one which under s. 10 might not be barred by any length of time. *Bulwant Rao Bishuant Chor v. Puran Mal Chaube, L. R., 10 I. A., 90,* referred to. MUHAMMAD HABIBULLAH KHAN *v.* SAFDAR HUSAIN KHAN . I. L. R., 7 All., 25

39. ———— *Constructive trust.*—*B* and *D*, father and son, were jointly entitled to a moiety of certain property, *B*'s brother *E*, and *K*, *E*'s son, being jointly entitled to the other moiety. *B* and *D* were transported for life. Thirty years afterwards (*B* having meantime died) *D* returned from transportation, *and asserted his right to a moiety against* a person deriving his title from *E* and *K*, who had taken possession of the whole. *Held*, looking to all the circumstances of the case, that *E* and *K* had taken possession subject to a constructive trust in favour of *B* and *D*, and that accordingly *D* was entitled to assert his right, and no limitation could affect it. DURGA PRASAD *v.* ASA RAM

[I. L. R., 2 All., 361

40. ———— and art. 98—*Liability*

liquidators of the company sought to recover that sum from the defendants, who had been directors of the company, and a further sum of R2,48,670-14-0 as damages sustained by the company through the fraud and gross negligence of the defendants in permitting Nursey Kessowji, the agent of the company, to deal with certain shares for his own purposes. One of the defendants (No. 3) died after

the representatives, was *not covered by s. 10 and* art. 98 of the second schedule of the Limitation Act, and was barred by the lapse of three years, that as the limitation counted from the date of the institution of the suit, and not from the date of the amendment of the plaint, the whole claim survived in this case. NEW FLEMING SPINNING AND WEAVING COMPANY *v.* KESSOWJI NAIK . I. L. R., 9 Bom., 373

41. ———— *Creditor's trust fund—* ... —Where ... on for r- ... suit was ... creditors, ... and dis-

would be a resulting trust not expressly declared, s. 1

LIMITATION ACT, 1877—*continued.*

of the Limitation Act, 1877, would not apply. MANICKAVELU MUDALI *v.* ARBUTHNOT & Co.
[I. L. R., 4 Mad., 404

42. ——— *Suit by cestui que trust against trustee—Trust*—*A* alleged that his father *B* had, before his death, placed in the hands of *C* a certain sum of money, and had also transferred to *C* his landed property upon trust that *C* should,

be unexpended, and that *C* had accepted the trust, but, upon *A*'s coming of age, had refused to render any account *A* accordingly brought a suit for an account. *C*
at a much
the suit was
under s. 10
barred by any length of time *Held* that s. 10 of Act XV of 1877 did not apply to such a case, and that *A*'s suit would be barred if not brought within six years from the time when he attained his majority, and became entitled to demand an account In India, suits between a *cestui que* trust and a trustee for an account are governed solely by the Limitation Act (XV of 1877), and, unless they fall within the exemption of s 10, are liable to become barred by

the suit is not to recover any property in specie, but to have an account of the defendant's stewardship,

[I. L. R., 5 Calc., 910: 6 C. L. R., 195

43. ——— *Act XI of 1859, s. 31—Collector—*
of sale for
a suit in
Secretary o
sale-proceeds
Government revenue on 3rd October 1877, which sale-proceeds were in the hand of the Collector,—*Held* that s 31 of Act XI of 1859 did not vest the surplus sale-proceeds in the Collector as trustee, that a deposit did not necessarily create a trust, and that therefore s. 10 did not apply. SECRETARY OF STATE FOR INDIA *v.* FAZAL ALI I. L. R., 18 Calc., 234

See SECRETARY OF STATE FOR INDIA *v.* GURU PROSHAD DHUR . I. L. R., 20 Calc., 51

44. ——— *Suit against a trustee.—*

mother about the time of her marriage in 1836;

suit was not barred by limitation on the allegations in the plaint. SETHU *v.* KRISHNA
[I. L. R., 14 Mad., 61

45. ——— *Laches—Suit against directors of company—Stale demand—Trustees.*—The plaintiff company was formed in 1861, and the company went into liquidation in 1867. In April 1890, the present suit was filed against the defendant, who had been one of the directors of the company, and it was alleged that, after the formation of the company, the defendant and his co-directors had carried on speculative dealings in shares of other companies and had used the funds of the company for this purpose, which was not warranted by the memorandum of association. The plaintiffs alleged

them were dead and two had become insolvent,

46. ——— *Auction-purchaser—*

s. 10. CHINTAMONI MAHAPATRO *v.* SARUP SE
[I. L. R., 15 Calc., 703

——— s. 12 (1871, s. 13; Act VIII of 1859, s. 333).

See APPEAL—ACTS—COMPANIES ACT
[I. L. R., 18 All., 215

See REVIEW—FORM OF, AND PROCEDURE ON, APPLICATION I. L. R., 17 All., 213

1. ——— *Computation of period of limitation—Day on which cause of action arises*—In calculating the period of limitation for bringing suits provided by Act XIV of 1859, the day on which

LIMITATION ACT, 1877—*continued.*

the cause of action arose was to be excluded from the computation. MUNDY CHINNA COMARAPPA SETTI *v.* RAMASAMY SETTI . . . . 4 Mad., 409

DURSHUN LALL SAHOO *v.* ASMUTOONISSA [19 W. R., 94

2. ———— *Calculation of period of limitation.*—In calculating the period of limitation for bringing suits, the day on which the cause of action arose should be included in the computation; and in excluding from the limitation the period during which a suit was pending, the day on which proceedings therein were commenced and the day on which they ended should both be counted. HURRO SOONDEREE DABEA *v.* KALLYMOHUN

[Marsh., 138: W. R., F. B., 46: 1 Hay, 301

3. ———— *Exclusion of day on which contract is made or debt is payable.*—The date on which a contract is made is to be excluded in computing the time allowed for its performance. The date on which a debt becomes payable is to be excluded in calculating the period of limitation. LAKSHUMAN SAKHARAM *v.* RANU BIN SIDOJI

[6 Bom., A. C., 51

4. ———— *Exclusion of day on which agreement was made.*—In a suit for balance of an account stated, the defendant had given a written acknowledgment, on 22nd July 1867, that the sum sued for was due from him to the plaintiff. The plaint was presented on 22nd July 1870. *Held* the day on which the acknowledgment was made was to be excluded, and therefore the suit was not barred MADAN MOHUN DAS *v.* GAUR MOHUN SIRKAR

[6 B. L. R., 293 note

5. ———— *Suit on bond—Exclusion*

6. ———— *Suit on bond—Exclusion*

being the day on which the right to sue accrued. RAM CHURN DEY *v.* INA SHEIK . 24 W. R., 463

which the bond was dated. VENKUBAI *v.* LAKSHMAN VENKOBA KHOT . . I. L. R., 12 Bom., 617

S. C. on appeal. TARACHAND GHOSE *v.* ABDUL ALI . . 8 B. L. R., 24: 16 W. R., O. C., 1

MUHTAB *v.* RAM DYAL . . 3 Agra, 319

9. ———— *Civil Procedure Code, 1859, s. 246—Time for suing.*—The day on which judgment is pronounced is not to be reckoned within the time allowed for bringing a suit under s. 246. PETAMBUR SHAHA *v.* KUROONA MOYEE DEBEA

[W. R., 1864, 321

10. ———— *Civil Procedure Code, 1859, s. 246.*—The day on which the order under s. 246 was passed must be excluded in computing the year allowed by that section. KASHEENATH SHAHA *v.* JOGENDRONATH BABOO . . 22 W. R., 68

11. ———— *Computation of period of*

dered. BAPU BIN ISHVAR *v.* LAKSHUMAN BAJI [10 Bom., 19

12. ———— *Computation of time—Exclusion of day under s. 20 of the Limitation Act, 1859.*—The day on which the application for execution is made is not to be reckoned in computing the three years alluded to in s. 20, Act XIV of 1859. VIRASAMY MUDALI *v.* MANOMMANY AMMAL. VENKATA BALAKRISHNA CHETTI *v.* VIJIARAGUNADHA VALAJI KRISHNA GOPALER . 4 Mad., 32

13. ———— *Act IX of 1871, s. 13—Computation of period of limitation.*—In calculating the period of limitation prescribed in sch. II of

MANCHARAM KALLIANDAS *v.* RATILAL LALSHANKAR . . . . . 6 Bom., A. C., 39

14. ———— *Execution of decree—Holiday—Sunday.*—A decree was passed on the 6th September 1865. Application for execution was made on 7th September 1868; the 6th September 1868 was Sunday. *Held* that the day on which the application for execution was made was not to be excluded from the computation, and that the application must be made within three calendar years from

LIMITATION ACT, 1877—*continued.*

the passing of the decree. KHODIE LAL *v.* BISWASU KUNWAR 4 B. L. R., A. C., 131: 13 W. R., 122

But *see* BRAJABEHARI *v.* KAMAL ROY [1 B. L. R., S. N., 1

S. C. BROJO BEHAREE SAHOY *v.* KEWAL RAM [10 W. R., 5

This section does away with the case of ELIAS *v.* HABOOL MOOSHEE MOOSHEE [1 Ind. Jur., N. S., 18: Bourke, 382

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no
eal

15. ——— *of judgment*
the putting
decree should
for the presentation of an appeal. LALL GOPALNATH SAHEB DEO *v.* PUDUM KOONWAR [5 W. R., Mis., 44

GOPEENATH ROY *v.* GOPEENATH CHATTERJEE [6 W. R., Mis., 106

16. ——— *Deduction of time necessary for obtaining copy of decree—Copy of judgment—Appeal.*—In computing the period of ninety days under s 13 of Act IX of 1871 for filing an appeal, the appellant is, as a matter of right, entitled to deduct the number of days required for taking a copy of the decree only. The word "decree" in that section does not include the "judgment." Under
, admitted the
HOBIL PAT-
21 W. R., 308

17. ——— *Deduction of time necessary for obtaining copy of decree.*—In computing the period of limitation prescribed for an appeal by s. 13 of Act IX of 1871, the time from which the period must be taken to run is the date of the decree appealed against; and the days which under that section may be excluded are only the days requisite for obtaining a copy of the decree. But if in any

18. ——— *Application for copy of decree—Practice.*—A suit for possession of land

vered on the 31st January, and an appeal was filed by the applicant on the 2nd March. The Court to which the appeal was presented held that, according to the practice of the Court, the fees ought to

LIMITATION ACT, 1877—*continued.*

Court. NOBIN CHUNDER ROY *v.* BROJENDRO COOMAR ROY . . . . 12 C. L. R., 541

19. ——— and art. 151—*Appeal*—

memorandum of appeal to the Registrar on the 5th September 1883, but by reason of the decree not

thereof was obtained by the defendant's attorney, who, on the 8th September, served a copy at the office of the plaintiff's attorney. On the 12th September, the plaintiff applied for an office copy, which he obtained on the 13th, and on the 15th tendered such copy and his memorandum of appeal to the Registrar. The Registrar refused to accept the appeal, unless under an order of Court, it being in his opinion out of time. On the 6th December 1883, a Juge sitting on the original side admited the ap-

time. RAMEY *v.* BROUGHTON [I. L. R., 10 Calc., 652

20. ——— *Exclusion of time necessary for obtaining copy of judgment.*—Certain accused persons were convicted on the 29th February 1884, and made their first application for a copy of the judgment on the 25th March, tendering stamped paper for such copy on the 20th and 29th March.

appeal ought to have been admitted. IN THE MATTER OF JHABBU SINGH . I. L. R., 10 Calc., 642

21. ——— *Appeal under cl. 10 of the Letters Patent.*—In computing the period of limitation prescribed for an appeal under cl. 10 of the Letters Patent, the time requisite for obtaining a copy of the judgment appealed from cannot be deducted, such copy not being required under the rules

LIMITATION ACT, 1877—*continued.*

of the Court to be presented with the memorandum of appeal. FAZAL MUHAMMAD *v.* PHUL KUAR [I. L. R., 2 All., 192

22. ———— *Time for obtaining copy*

23. ———— *Delay in appealing—Time for obtaining copy of decree*

pronounced and that on which the decree was signed by the Judge was allowed to be deducted, as coming within the words "exclusive of such time as may be requisite for obtaining a copy of the decree" in that section. IN THE MATTER OF CHOWDHRY MOHENDRO NARAIN ROY . . 18 W. R., 512

24. ———— *Time for obtaining copy of judgment.*—The "time requisite for obtaining a copy of the decree" appealed against, which, under s. 12 of the Limitation Act (XV of 1877), is to be excluded in computing the period of limitation for the appeal, is determined when the copy is ready for delivery. GOPAL CHUNDER ROY *v.* BROJO BEHARY MITTER . . . . . 9 C. L. R., 293

25. ———— *Appeal presented after time—Time requisite for obtaining copy of decree.*—Where a decree was passed on the 22nd September, and application for a copy was made not until 29th, and then with insufficient folios, and the Court was closed for the ...

site number of folios was GUNGA DASS DEY *v.* RAMJOY DEY . . I. L. R., 12 Calc., 30

26. ———— *Exclusion of time between delivery of judgment and signing decree—Time for obtaining copy of decree.*—Where a suitor is unable to obtain a copy of a decree from which he desires to appeal, by reason of the decree being unsigned, he is ...

... BENI MADHUB MITTER *v.* MATUNGINI DASSI. KALI SHUNKER DASS *v.* GOPAL CHUNDER DUTT [I. L. R., 13 Calc., 104

27. ———— s. 5, and art. 152—*Civil Procedure Code, ss. 542, 587—Time requisite for obtaining copy of decree—Exclusion of time between delivery of judgment and signing of decree—Exclusion of time between furnishing of estimate of cost of copy and compliance with estimate*—Judgment was pronounced by the Court of first instance on the 23rd May 1887. The decree was

LIMITATION ACT, 1877—*continued.*

signed on the ...

... which showed that the appeal was beyond time.

consequence of which he re-admitted the appeal, and cancelling his order of the 2nd August, directed that the appeal should be heard. *Held* that the appeal was barred by limitation under art. 152, sch. II of the Limitation Act (XV of 1877). S 5 of the Limitation Act cannot be applied in making the computation of time provided for by s. 12, and does not become applicable until after such computation has been made. *Raj Coomar Roy* v. *Mahomed Waris, 7 W. R., 337,* dissented from. In computing the time to be excluded under s 12 of the Limitation Act from a period of limitation, the time "requisite for obtaining a copy" does not begin until an application for copies has been made. If, therefore, after judgment, the decree remains unsigned, such interval is not to be excluded from the period of limitation, unless an application for copies having been made, the applicant is actually and necessarily delayed through the decree not having been signed *Beni Madhub Mitter* v. *Matungini Dassi, I. L. R., 13 Calc , 104,* dissented from. *Per* EDGE, C.J, BRODHURST and YOUNG, *JJ.*—A Court, in computing, under s. 12 of the Limitation Act, 1877, the time requisite for obtaining a copy of a decree or of a judgment, has no discretion, and is confined to ascertaining, for the purposes of such computation, the time occupied by the office, after application made, in preparing the estimate, and, after payment of the amount of the estimate has been made, the time occupied by the office in preparing the copy or copies ready to be delivered to the party who has applied for them. *Per* EDGE, C J.—The only section in the Limitation ...

obtaining a copy." Whether or not such delay is unavoidable is a question of fact in each case. BECHI *v.* AHSAN-ULLAH KHAN [I. L. R., 12 All., 461

28. ———— s. 5, and art. 170—*Application for leave to appeal as a pauper—Time requisite for obtaining copy of decree—Exclusion of time between delivery of judgment and signing*

LIMITATION ACT, 1877—*continued.*

of decree.—Judgment was pronounced by the lower [illegible]

date the day on which the judgment was pronounced. On the 15th April the plaintiff applied for a copy of the decree; on the 16th she received notice that the estimate of the costs of preparing the copy was prepared; on the 19th she paid into Court the amount required by the estimate. She had notice to attend on the 23rd for delivery to her of the copy, and on the 25th she attended and received the copy. On the 12th May she presented in the High Court, to the proper officer, an application, under s. 592 of the Code, for leave to appeal as a pauper. *Held* that the application was barred by limitation under art. 170, sch. II of the Limitation Act (XV of 1877), and that s. 5 of the Act did not apply. *Per* EDGE, C.J.—In computing the period of limitation prescribed for an appeal or for an application for leave to appeal as a pauper, where the decree appealed against is not signed until a date subsequent to the date of delivery of judgment, the intermediate period should, under s. 12 of the Limitation Act, be excluded if the delay in signing the decree has delayed the appellant or applicant in obtaining a copy of the decree, and not otherwise. *Beni Madhub Mitter v. Matungini Dassi, I. L. R., 13 Calc., 104,* referred to. A delay caused by the carelessness or negligence of a party applying for copy of decree, such as negligence in coming forward to pay the money required, cannot be taken into consideration or allowed for in computing the time requisite for obtaining the copy. The time requisite, within the meaning of s. 12 of the Limitation Act, does not mean requisite by reason of the carelessness or negligence of the applicant: it means the time occupied by the officer who has got to provide the copy, in making the copy. The important date with reference to s. 12 and art. 170 is not the date when the copy of the decree is delivered, but the date when it is ready for delivery to the applicant if the applicant chooses to apply, where he has had notice that the copy will be ready on that date. PARBATI *v.* BHOLA . I. L. R., 12 All., 79

29. [illegible] *of judg*[illegible] *Act (*[illegible] Court [illegible]

days, and praying for restoration of the previous [illegible]

LIMITATION ACT, 1877—*continued.*

should be preferred to the District Court. RAMANUJA AYYANGAR *v.* NARAYANA AYYANGAR

[I. L. R., 18 Mad., 374

30. ——————— *Exclusion of time requisite for obtaining copies of the decree and judgment—Delay in presentation of appeal owing to Court being closed—Limitation Act, s. 5, and art. 152.*—If the period prescribed by the second schedule of the Indian Limitation Act, 1877, for the presentation of an appeal expires on a day on which the Court [illegible]

of the re-opening of the Court, whilst his right of appeal is still alive, he is entitled to the benefit of the time requisite for obtaining the copies, and if his appeal be presented before the expiry of that time, it is not barred by limitation. A decree was [illegible]

on the same day she presented her appeal to the Appellate Court. *Held* that the appeal was within time. SIYADAT-UN-NISSA *v.* MUHAMMAD MAHMUD

[I. L. R., 19 All., 342

31. ——————— and art. 152—*Appeal from decree or order—Civil Procedure Code (Act XIV of 1882), s. 205—Time from which limitation runs—Time requisite for obtaining copy of the decree—Time between pronouncement of judgment and signing of the decree.*—The time for presenting an appeal against a decree or order is thirty days from the date of such decree or order (art. 152 of the [illegible]

and to end when he obtains the copy. A party who delays to apply for such copy is not entitled to exclude the period of such delay. A party is at liberty to apply for a copy of the decree, whether the decree has been signed or not. If he has applied, but the copy cannot be prepared because the decree has not been signed, then this time and the time taken up in preparing the copy will be excluded, [illegible], the non-[illegible]ect at all [illegible] the 18th [illegible] made by [illegible] he bill of costs (the order as to costs being a part of the order or decree) was not signed until 18th January 1898. The plaintiff proposes to appeal against the above [illegible]

presented on the 24th February. The lower Court held the appeal barred by limitation under art. 152 of

LIMITATION ACT, 1877—*continued.*

the judgment and order were applied for, to the 24th January 1898, on which date they were furnished. The judgment was pronounced on the

February 1898. YAMAJI *v.* ANTAJI
[I. L. R., 23 Bom., 442

32. ———— s. 5, and art. 156—*"Time requisite for obtaining a copy of the decree appealed against"—Neglect of Court officials in*

An application for a copy of the judgment under appeal was made by the appellants on the 28th March, and the 29th March was fixed by the office as the date when the estimate of the cost of such copy was to be delivered, and it was delivered on that day. The estimate was not complied with until the 5th April, when the appellants put in the necessary

33. ———— *Civil Procedure Code, 1882, s 599—Period of limitation for an admission of an appeal to Privy Council.*—On a petition for

by the petitioner in getting a copy of the decree

34. ———— *Application for certificate for appeal to Privy Council—Limitation Act (XV*

LIMITATION ACT, 1877—*continued.*

35. ———— *Act XXIV of 1839,*

1839 against a decree passed by the Agent to the Governor, and assuming the time for such an appeal to be three months from the date of the decision, the time necessary for procuring copies of decree and judgment appealed against may be deducted. *Held,* however, that no time for such an appeal was fixed. MAHADEVI *v.* VIKRAMA . I. L. R., 14 Mad., 365

36. ———— *Madras Rent Recovery Act (Mad. Act VIII of 1865), ss. 18 and 69—Deduction of time occupied in obtaining copy of judgment appealed against.*—A tenant whose property had been distrained for arrears of rent sued

KAPPA NAYANIM *v.* SITHALA NAIDU
[I. L. R., 20 Mad., 476

37. ———— and art. 154—*Appeal by prisoner—Limitation—Time necessary to obtain copy of judgment*—In computing the period of limitation prescribed for an appeal from a sentence of a Criminal Court by art. 154 of sch. II of

38. ———— *Computation of limitation—Act XIV of 1859, s 1, cl. 6.*—In computing

———— s. 13 (1871, s 14; 1859, s. 13).

1. ———— *Ignorance of defendant's residence—Absence from India.*—Ignorance of defendant's residence does not fall within any of the provisions of the Limitation Act, extending the periods of limitation prescribed by that Act. But under s. 13 plaintiff is entitled to exclude from

LIMITATION ACT, 1877—*continued.*

the computation of the periods of limitation appli-

bound to give full effect to the language in which that indulgence is conceded. MAHOMED MUSEEH-OOD-DEEN KHAN *v.* MUSEEHOODDEEN [2 N. W., 173

2. ——— and s. 9—*Continuous running of time—Exclusion of time of defendant's absence from British India.*—S. 13 of the Limitation Act, 1877, is not in any way affected or qualified by s. 9 of the same Act. In computing, therefore, the period of limitation prescribed for a suit, the time during which the defendant has been absent from British India should be excluded, notwithstanding that such period had begun to run before the defendant left British India. *Narronji Bhimji v. Mugniram Chandaji, I. L. R., 6 Bom., 103,* dissented from. BEAKE & Co. *v.* DAVIS [I. L. R., 4 All., 530

3. ——— *Defendant's absence from British India—Computation of the period of limitation—Adjusted and signed account.*—Ss. 9 and 13 of Act XV of 1877 adopt the law of limitation in England, and they must be read together in computing the period of limitation. Where the statutory period has once begun to run in respect of any cause of action, the subsequent absence of the defendant from British India will not stop it from running.

Nizam. There was no subsequent payment of interest as such, and no payment of any part of the principal. *Held* that the plaintiffs' suit for the balance of the account was barred by the law of limitation, not having been brought within three years after the adjustment. NARRONJI BHIMJI *v.* MUGNIRAM CHANDAJI I. L. R., 6 Bom., 103

4. ——— *Defendant's absence from India.*—The plaintiff sued on a bond, dated 20th August 1879, payable by monthly instalments, the first to be due on 4th September 1879, the bond provided that, if default should be made in one instalment, the obligor should, if so required, pay the whole amount. The defendant made default in the fourth instalment, and no more instalments were paid, and no demand of payment was made

on the 4th December 1879, nevertheless the suit was not barred, inasmuch as the period during which the defendant had been absent from India was to be deducted in computing the period of limitation. HANMANTRAM SADHURAM PITY *v.* BOWLES [I. L. R., 8 Bom., 561

5. ——— *Absence of defendant from British India.*—S. 13 of the Limitation Act, which excludes the time during which a defendant has been absent from British India in computing the

6. ——— *Absence from India—Defendant carrying on business by agent.*—The words "absent from British India" in s. 13 of the Limitation Act should be construed broadly, and not limited in their application only to such persons as have been present there, or would ordinarily be present, or may be expected to return. *Semble*—A defendant is within s. 13, notwithstanding his having carried on a trade or had a shop or a house of business under an agent in British India. *Harrington v. Gonesh Roy, I. L. R., 10 Calc., 440,* commented upon. ATUL KRISTO BOSE *v.* LYON & Co. [I. L. R., 14 Calc., 457

7. ——— *Absence of defendant from British India—Defendant carrying on business in British India through an authorized agent.*—S. 13 of Limitation Act, which excludes the time during which a defendant has been absent from British India in computing the period of limitation for any suit, applies even where, to the knowledge of the the plaintiffs, the defendants, partners in a firm, are during the period of their absence carrying on

8. ——— *Absence from British India—Proceedings in execution of decree.*—The provisions of s 13 of Act XV of 1877 are not applicable to proceedings in the execution of a decree. AHSAN KHAN *v.* GANGA RAM . . I. L. R., 3 All., 185

——— s. 14 (1871, s. 15; 1859, s. 14).

SOUDAMONEE DOSSEE *v.* POORNO CHUNDER ROY [W. R., 1864, Act X, 113

DABEE *v.* NUKEESUNNISSA [W. R., 1864, Act X, 116

JUGGURNATH ROY CHOWDHRY *v.* RAJ CHUNDER ROY . . . W. R., 1864, Act X, 120

RAM SUNKUR SANAPUTTY *v.* GOPAUL KISHEN DEO . . . . . 1 W. R., 68

MODHOO SOODUN MOJOOMDAR *v.* BROJONATH KOOND CHOWDHRY. . 5 W. R., Act X, 44

LIMITATION ACT, 1877—*continued.*

Nor to its amending Act for the North-West Provinces (Act XIV of 1863). NONA *v.* DHOOMUN DASS . . . . 5 N. W., 30

It was also held not applicable to s. 42 of Bombay Act VII of 1867. HARI RAMCHANDRA *v.* VISHNU KRISHNAJI . . . . . 10 Bom., 204

1. ——— *Computation of period of limitation—Suit for arrears of rent—Act X of 1859.*—The provisions of s 14 of Act XV of 1877 are not applicable to suits for arrears of rent under Act X of 1859. NAGENDRO NATH MULLICK *v.* MATHURA MOHUN PARHI . . I. L. R., 18 Calc., 368

2. ——— *Appeal—Suit—Computation of time for appeal.*—S. 14 of the Limitation Act does not apply to the computation of time for appeals, but only to suits. ARDHA CHANDRA RAI CHOWDHRY *v.* MATANGINI DASSI [I. L. R., 23 Calc., 325

brought in the Court of the District Judge of Belgaum on 30th January 1882 and was subsequently presented on the same day in the Court of the Subordinate Judge of Belgaum, the High Court held

4. ——— *Special limitation under Acts other than the Limitation Act—Suit under Registration Act (III of 1877), s. 77*—S. 14 of the Limitation Act provides for cases in which a

BUTTY *v.* DINABASHY SHAHA [I. L. R., 10 Calc., 265

The corresponding section of Act XIV of 1859 and Act X of 1871 was held not to apply to cases of execution of decrees KHETTRONATH DEY *v.* GOSSAIN DOSS DEY . . . 1 Ind. Jur., N. S., 40 [4 W. R., Mis., 18

SHEO NARAIN *v.* JOOGUL KISHEN RAM [7 W. R., 327

KRISHNA CHETTY *v.* RAMI CHETTY 8 Mad., 99

NARAN APPA AIYAN *v.* NANNA AMMAL *alias* PARVATHY AMMAL . . . 8 Mad., 97

MAHALAKSHMI AMMAL *v.* LAKSHMI AMMAL [8 Mad., 105

JIWAN SINGH *v.* SARNAM SINGH [I. L. R., 1 All., 97

TIMAL KUARI *v.* ABLAKH RAI [I. L. R., 1 All., 254

DHONESSUR KOOER *v.* ROY GOODER SAHOY [I. L. R., 2 Calc., 336

WOOMACHURN MITTER *v.* MOHAMOYA. WOOMACHURN MITTER *v.* BEJOY KISHORE ROY [W. R., 1864, 130

BANEE KANT GHOSE *v.* HARAN KISTO GHOSE [24 W. R., 405

GIRIDHARA DOSS MANAKJI TADAHAYAI BIRZI MOHONDOSS *v.* SURANENI LAKSHMI VENKAMMA ROW. CALAPATAPU KRISTNAYYA *v.* LAKSHMI VENKAMMA ROW . . . . 5 Mad., 93

Contra, PROMOTHONATH ROY BAHADOOR *v.* WATSON & CO. . . . . 24 W. R., 303

But s. 14 of Act XV of 1877 now expressly applies to applications of any sort.

5. ——— *Decree passed by Mamlatdar—*

spent on proceedings in second suit.—A Mamlatdar having in a possessory suit passed a decree

entitled to obtain from the Mamlatdar an order for the execution of his decree, unless it was barred by limitation. It was not barred, inasmuch as in

6 ——— *Deduction of time occupied by former suit under old law of limitation.*—

LIMITATION ACT, 1877—*continued.*

The plaintiff instituted a suit under the old law (Bengal Regulation III of 1793), and was non-suited on appeal, because the plaint was defective in not stating the boundaries of the land claimed. While the appeal was pending, Act XIV of 1859 came into operation. He instituted a fresh suit, and claimed to deduct the time occupied in prosecuting the former suit and appeal under the provisions of Act XIV of 1859, s. 14. *Held* (by the majority of the Court) that the plaintiff was non-suited owing to his negligence, and the time sought to be deducted from the period of limitation could not be allowed. *Per* LOCH and PUNDIT, *JJ.*—Under the circumstances, the time should be deducted in computing the period of limitation. CHUNDER MADHUB CHUCKERBUTTY *v.* RAM COOMAR CHOWDHRY

[B. L. R., Sup. Vol., 553
6 W. R., 184

The former proceeding must have been taken by

MORRIS *v.* SAMBAMURTHI RAYAN 6 Mad., 122

7. ———— *Suit bonâ fide brought in Court without jurisdiction.*—The time for which suits may l[illegible]
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the suits v
diligence. NOBO COOMER CHUCKERBUTTY *v.* KOYLASCHUNDER BAROOEN . . 17 W. R., 518

8. ———— *Deduction of time former suit was being prosecuted.*—The plaintiffs sued the son of a deceased debtor without ascertaining whether or not he was of age, and then, when the plaint was returned to them, they sued the minor's mother, also without ascertaining whether she was legally constituted guardian of the minor. The lower Courts determined the suit, but the High Court was unable to support their decrees in consequence of the defect, which came to light in special appeal. The plaintiffs having brought a second suit, it was held that, in computing the period of limitation, they were not entitled, under provisions of s. 15 of Act IX of 1871, to an exclusion of the time occupied by them in prosecuting the first suit. The Court doubted whether, assuming the case fell under the provisions of the section, the plaintiffs could be said, under the circumstances, to have prosecuted the first suit with due diligence and in good faith. BAHAL SINGH *v.* GAURI . 7 N. W., 284

9. ———— *Execution of decree—Attachment of decree—Held* that, in calculating the period of three years from the date when effectual proceedings had last been taken to keep alive a decree, the period during which the decree had remained under attachment in execution of a decree against the judgment-creditor should be deducted, the decree-holder having been prevented from exercising due diligence. CHANDI PRASAD NANDI *v.* RAGHUNATH DHAR . . 3 B. L. R., Ap., 52

LIMITATION ACT, 1877—*continued.*

10. ———— *Application for transmission of decree—Proceedings bonâ fide in Court without jurisdiction.*—On the 2nd March 1887, *S* obtained a mortgage-decree against *P* in the Court of the Munsif of Hajipore. On the 9th September 1887, *S* applied for execution, and on the 7th November 1887 the mortgaged property was sold by the Hajipore Court. On appeal, on the 2nd September 1890, the High Court set aside the sale on the ground of want of jurisdiction. Thereupon, on the 6th [illegible]

had meanwhile purchased the mortgaged property from *P*, objected that the application was barred. *Held* that the application was not barred, as the application of the 6th September 1890 was a step in aid of execution, and also as s. 14, para. 3, of the

decree in the Court having no jurisdiction, the application having been manifestly made in good faith. *Nilmoney Singh Deo v. Biressur Banerjee, I. L. R., 16 Calc., 744*, distinguished. *Latchman Pundeh v. Maddan Mohun Shye, I. L. R., 6 Calc., 513*, referred to. RAJBULLUBH SAHAI *v.* JOY KISHEN PERSHAD *alias* JOY LAL

[I. L. R., 20 Calc., 29

11. ———— *Suit on hundi payable at fixed date—Deduction of time former suit prosecuted in Court without jurisdiction.*—On the 14th April 1889, the defendant at Gwalior drew a hundi for R2,500 on his firm at Bombay in favour of *D*, payable forty-five days after date. It was subsequently indorsed at Gwalior by *D* to the plaintiff at Cawnpore, who sent it to the Bank of Bombay at Bombay for collection. It was to become payable on the 1st June 1889, but on the 23rd April 1889 the Bank presented it to the defendant's firm at Bombay for acceptance, which was refused. The Bank thereupon returned it to the plaintiff at Cawnpore, and it was never presented for payment. On the 16th June 1891, the plaintiff filed a suit upon

PRALHADDAS SURKARN . I. L. R., 20 Bom., 133

12. ———— *Ineffectual appeal proceedings.*—When a person appealed from an award of [illegible]

award, and not from the date of the order in the

LIMITATION ACT, 1877—*continued.*

ineffectual appeal proceedings. GHOLAM DARBESH CHOWDHRY *v* SHAM KISHORE ROY
[W. R., 1864, 378

13. ——— *Due diligence—Non-production of Collector's certificate*—The plaintiff brought in 1876 a suit against the defendant in respect of the same cause of action as the present suit. In that suit a certificate of the Collector under s. 6 of the Pensions Act (XXIII of 1871), which was necessary to give jurisdiction to the Court, not having been obtained, the claim was rejected on that ground. *Held,* in the subsequent suit, that the non-production of the Collector's certificate does not necessarily constitute such a want of due diligence on the plaintiff's part as to disentitle him to the deduction of time allowed by s. 14 of the Limitation Act (XV of 1877). PUTALI MEHETI *v.* TULJA
[I. L. R., 3 Bom., 223

14 ——— *Court having no jurisdiction*—A deduction of the time a former suit was pending from the period of limitation can only be claimed under s 14, when the Court before whom the former suit was brought had no jurisdiction and where there has been no adjudication. NUND DOOLAL SIRCAR *v.* DWARKANATH BISWAS 2 W. R., 9

KALEE CHUNDER CHOWDHRY *v.* RUTTUN GOPAL BHADOOREE . . . . 2 W. R., Mis., 1

15 ——— *Deduction of time former*

before the Court not having jurisdiction disposed of the first suit, is immaterial MORRIS *v.* SAPAMTHEETHA PILLAY . . . . 6 Mad., 45

16. ——— *Deduction of time proceedings are prosecuted in Court the order of which is afterwards set aside.*—A period, during which a party to a suit is engaged in prosecuting a claim for wasilat, counts towards limitation if the Court in which the claim is prosecuted has jurisdiction to adjudicate upon it, though its order was reversed as being one which it was beyond the power of the Court to give. PERLADH SEIN *v.* GUNNESS LALL TEWARY . . . 25 W. R., 540

17. ——— *Deduction of time claim was being prosecuted in another Court.*—To meet

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... W. R., 274

18 ——— and arts. 29, 49—*Time occupied in prosecuting suit in another Court—Dismissal of suit through defect of jurisdiction or other cause of like nature—Court unable to entertain suit because misconceived*—Defendants having attached certain goods on 12th June 1895, in execution of a decree obtained by them against

LIMITATION ACT, 1877—*continued.*

M, a claim was preferred by plaintiff on 19th June 1895 and disallowed. Plaintiff thereupon brought a declaratory suit on 2nd August 1895 in the City Civil Court, Madras, and obtained an injunction to stop the sale of the goods, which, however, was

goods or their value, which was dismissed on 2nd May 1898. The dismissal was upheld by a Full

arisen on 7th February 1898, the date on which plaintiff's right to the specific moveable property had been finally declared. He also claimed that the time occupied in the proceedings in the Court of

dismissed, not because the Court, through defect of jurisdiction or other cause of a like nature, was unable to entertain it, but because it was misconceived. MURUGESA MUGALIAR *v.* JATTARAM DAVY
[I. L. R., 23 Mad., 621

19. ——— *Deduction of time suit was being prosecuted in another Court.*—*L* and *R,* the

1864 a sum of money on which the sale was stayed. *K,* being then in arrear in the payment of his darpatni rent, claimed to set off the amount deposited in the Collectorate against the rent due to *L* and *R.* This *L* and *R* refused to allow, and they brought a suit in the Collector's Court against *S* and his sureties to recover the arrears of rent In that suit *K* intervened claiming the benefit of the set-off, to which, however, the High Court on 26th June 1866, on appeal, held that he was not entitled, the deposit being merely a voluntary payment by *K.* On 30th October 1867, *K* brought a regular suit

LIMITATION ACT, 1877—*continued.*

against *S* and *L* and *R* to recover the amount of the deposit, and obtained a decree, but the decision was reversed on appeal, and the suit dismissed for want of jurisdiction. On 6th June 1869 *K* filed his plaint in the proper Court. *Held* that, whether the period of three years under s. 1, cl. 9, of Act XIV of 1859, or of six years as provided by cl. 16, s. 1 of t
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Affirming decision of lower Court in KHETTER PAUL SINGH *v.* LUCKHEE NARAIN MITTER
[15 W. R., 125

20. ——— *Deduction of time suit was being prosecuted in another Court.*—A suit for arrears of rent was brought by the plaintiff in the Revenue Court, but it was held that there being no actual contract between the plaintiff and defendant, and the defendant's liability arising out

[11 B. L. R., Ap., 31 note

21. ——— *Deduction of time suit was being prosecuted in another Court.*—Where a part-proprietor of a talukh, who was also co-sharer in a fractional portion thereof, brought suits in the Revenue Courts against his co-talukhdars for arrears of rent without allowing any deduction on account of his share, which suits were dismissed for want of jurisdiction,—*Held*, in a subsequent suit in the Civil Court for the rent for the same period, that the plaintiff was entitled, under s. 14, Act XIV of 1859, to a deduction of the time during which he was prosecuting his suit in the Revenue Court. GOBINDO COOMAR CHOWDHRY *v.* MANSON
[15 B. L. R., 56: 23 W. R., 152

22. ——— *Dismissal of former suit for want of any cause of action.*—Where a former suit was dismissed on the ground that as

unable to entertain. COMMERCIAL BANK OF INDIA *v.* ALLAOODDEEN SAHEB . I. L. R., 23 Mad., 583

LIMITATION ACT, 1877—*continued.*

23. ——— *Defect of jurisdiction, "of other cause of a like nature"—Misjoinder or causes of action—Deduction of time occupied by former suit wrongly instituted.*—A Hindu widow

share of the property, and the purchaser brought a suit for recovery of the property alienated by the widow on the 25th April 1890, making the reversionary heirs defendants. On the 19th June 1890 the reversionary heirs were added as co-plaintiffs, and the suit was dismissed on the ground of misjoinder of causes of action on the 19th February 1891. The

to be unable to entertain it from a cause of a "like nature" with defect of jurisdiction. *Held* also that s. 14 of the Limitation Act (XV of 1877) applied to this case, and that the plaintiffs were entitled to deduct the time during which they were prosecuting the former suit, and the present suit was not barred by limitation. MULLICK KEFAIT HOSSEIN *v.* SHEO PERSHAD SINGH . I. L. R., 23 Calc., 821

24.

the Registrar was not empowered to give such leave, and the suit was dismissed. A similar suit was then instituted, the leave of the Court having been first obtained. *Held* that the time during which the first suit was pending should be deducted in the computation of the period of limitation applicable to the second suit. SUBBARAU NAYUDU *v.* YAGANA PANTULU . . I. L. R., 19 Mad., 90

25. ——— *Cause of like nature—Misjoinder of causes of action—Want of leave under Civil Procedure Code, s. 44.*—In March 1891, the plaintiff sued the defendant to recover the sum of money due on the taking of an account between the plaintiff and the defendant, who was his agent, and to recover possession of certain land. The plaintiff did not obtain leave under the Civil Procedure Code, s. 44, for the institution of this suit, which was accordingly dismissed for misjoinder of causes of action. The plaintiff now instituted, on the 5th April 1893, two suits, the one for the money and the other for the land. *Held* that the plaintiff was entitled, under the Limitation Act, s. 14, to have *the time* ... deducted in the
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GAPPA CHETTI . . I. L. R., 20 Mad., 48

26. ——— *Suit instituted in wrong Court—Bonâ fide mistake of law.*—S. 14 of the

LIMITATION ACT, 1877—*continued.*

Limitation Act, 1877, applies to a case where a plaintiff has been prosecuting his suit in a wrong Court in consequence of a *bond fide* mistake of law. *Sitaram Paraji* v. *Nimba, I. L. R., 12 Bom., 320*, *Huro Chunder Roy* v. *Surnamoyi, I. L. R., 13 Calc., 266*, and *Krisna* v. *Chathappan, I. L. R., 13 Mad., 269*, referred to. *Ramjiwan Mal* v. *Chand Mal, I. L. R., 10 All., 587*, considered. BRIJ MOHAN DAS v. MANNU BIBI . I. L. R., 19 All., 348

27. ——————— *Bond fide mistake of law —Rejection of appeal on ground of limitation.*— That a *bond fide* mistake of law upon a doubtful point of jurisdiction of procedure as much entitles a person to the benefit of s. 14 of the Limitation Act as a *bond fide* mistake of fact. *Brij Mohan Das* v. *Mannu Bibi, I. L. R., 19 All., 348*, referred to. Where a sale under Act VII of 1880 was confirmed on the 28th May 1894 and an appeal to the Commissioner was rejected as being out of time and a suit was subsequently instituted in the Civil Court to set aside the sale on the 29th of July 1895,—*Held* (BANERJEE and PRATT, JJ., in referring the case to a full Bench) that the mere fact of the Commissioner having rejected the appeal on the ground of limitation is not sufficient to disentitle the plaintiff to the deduction of time under s. 14 of the Limitation Act during which that appeal was pending. But it is for the Court, before which the question whether this suit is barred by limitation is raised, to determine whether the appeal was really out of time or failed from defect of jurisdiction or other cause of a [illegible]

nature" and was accordingly outside the scope of s. 14 of the Limitation Act. BISHAMBHAR HALDAR v. BONAMALI HALDAR . . 3 C. W. N., 233

28. ——————— *Exclusion of time of proceeding bond fide in Court without jurisdiction— Misjoinder of causes of action—"Cause of a like nature."*—Two suits were brought for partition of the property of a deceased by his heirs under the Mahomedan Law—the first, by his widow and six children [illegible]

LIMITATION ACT, 1877—*continued.*

[illegible]

the two amended suits and the seven fresh plaints had been filed in December 1894, more than twelve years from his death. *Held* (on the question of limit- [illegible]

suit combining causes of action which could not be combined, being covered by the words "from other cause of a like nature,"—in s. 14 of the Limitation Act. That with reference to the widow's amended suit, inasmuch as her original suit (on behalf of herself and her six children) had been filed before the [illegible]

That for similar reasons a like deduction should be made in favour of the six fresh suits of her children (unless a contrary decision were necessitated by the fact that their plaints had remained unstamped until after the expiration of the extended period of limitation) ASSAN v. PATHUMMA

[I. L. R., 22 Mad., 494

29. [illegible]

LIMITATION ACT, 1877—*continued.*

nature, was unable to entertain it; that the provisions of s 14 of the Limitation Act therefore were not applicable; and that the suit was barred by limitation. *Per* STRAIGHT, *Offg. C.J.*—The former suit was not founded upon the same cause of action as the present, inasmuch as it was founded upon the alleged oral agreement and not upon the account stated. *Per* MAHMOOD, *J.*—The Courts of

[illegible]

ter or as imposing burdens. *Roddam* v. *Morley*, *L. J. Ch.*, 438; *Ali Saib* v. *Sanyairaz Peddabaliyra Simhula*, 3 *Mad.*, 6; *Empress* v. *Kola Lalang*, *I. L. R.*, 8 *Calc.*, 214, *Beil* v. *Morrison*, 7 *Peters (U. S)*, [illegible]

v. LAL KANDHAI LAL [illegible]

42. ———— *Prosecution of appeal bond fide.*—The time during which a plaintiff prosecutes an appeal *bonâ fide* and with due diligence, as well as that during which he prosecutes his case in the Court of first instance, must be deducted in computing the period of limitation. SHUMBHOONATH BISWAS v. KISTO DHUN SIRCAR

[5 W. R., S. C. C. Ref., 8

43. ———— *Deduction of period appeal was pending.*—Where a suit is brought and dismissed for want of jurisdiction, and an appeal is preferred in which the first decree is affirmed, if a suit be afterwards brought in the right Court, the [illegible]

44. ———— *Deduction of time suit* [illegible] Where a suit prose- [illegible]

45 ———— *Deduction of time—Pro-* [illegible]

LIMITATION ACT, 1877—*continued.*

Act IX of 1871, s. 15, the plaintiff was entitled to exclude the time during which he had been prosecuting the suit in the regular Court up to the date of the lower Appellate Court's judgment, but not the time during which he waited to get the plaint back. ABHAYA CHURN CHUCKERBUTTY v. GOUR MOHUN DUTT . . . . . 24 W. R., 26

46. ———— *Suit not against same defendants.*—A former suit brought, not against the [illegible] against one of them did [illegible]

computing limitation in a subsequent [illegible] MADHUB SURNOKAR v. KRISTO DOSS SURNOKAR

[5 W. R., 281

47. ———— *Deduction of time suit was being prosecuted in another Court.*—The question whether the plaintiff is entitled, in computing the period of limitation, to deduct the time occupied in prosecuting a former suit, depends in the first place upon the question whether the former suit was brought upon the same cause of action as the new suit. Where the plaintiff brought two suits, one against one branch of the family and the other against another branch, to recover a share of that portion of the property which was in the possession of each, and these suits were rejected on the ground of their having been improperly brought, it was held that in bringing a consolidated suit against all sharers for a general partition the plaintiff was not entitled to deduct the time occupied in prosecuting his former suits. JOITARAM BECHAR v. BAI GANGA

[8 Bom., A. C., 228

48. ———— *Deduction of time suit is being prosecuted in Court without jurisdiction.*—Under a decree made in a suit brought by *A* against *B*, *A* obtained possession of certain property. The [illegible] reversed on appeal, but no order was made [illegible] mesne profits [illegible] nd obtained an [illegible] e for possession [illegible] r as it awarded mesne profits, was [illegible] High Court as being an order he had no power to make, no right to mesne profits having been declared by the Appellate Court, and as being made "altogether without jurisdiction," they held that *B* should have applied to the Appellate Court which reversed the decree, or should have brought a separate suit for the mesne [illegible] of the judgment

[illegible]

DHONEE DEBIA

[B. L. R., Sup. Vol., 985: 9 W. R., 402

49. ———— *Presentation of plaint in wrong Court—Madras Boundary Act, s. 25.*—In 1883 a plaint, by way of appeal from a decision

LIMITATION ACT, 1877—*continued.*

Court. The plaint was then filed in the District Court more than two months after the date when the decision of the Boundary Settlement Officer was communicated to the parties. *Held* that s. 14 of the Limitation Act, 1877, applied, and that the suit was not barred by limitation. SESHAMA *v.* SANKARA [I. L. R., 12 Mad., 1

50. ——————— *Proceedings bond fide prosecuted in a Court without jurisdiction—Rent Recovery Act (Mad Act VIII of 1865), s. 78*—A landlord not having tendered a legal pottah to his tenant made a demand on him as for rent, and on his refusal to pay attached his holding. The tenant, to release the attachment, paid the sum demanded under protest on 23rd September 1885. On 22nd March 1886 the tenant filed a suit on the Small Cause side of the District Munsif's Court to recover the amount so paid: that suit was dismissed for want of jurisdiction on 2nd September 1886. On the last-mentioned date the tenant filed the present suit on the same cause of action. *Held* the suit was not barred by limitation under the six months' rule in s. 78 of the Rent Recovery Act by reason of the provisions of s 14 of the Limitation Act, 1877. KULLAYAPPA *v.* LAKSHMIPATHI [I. L. R., 12 Mad., 467

51. ——————— *Execution of time during which former suit was pending—Suit to set aside order—Limitation Act, 1877, art. 11.*—Under a

52. ——————— *Deduction of time spent*

a decree
representative
directed

LIMITATION ACT, 1877—*continued.*

that the amount adjudged should be recovered from *C*'s assets in the hands of *B*. In execution of this decree, certain property was attached *B* claimed this property as his own, and sought to remove the attachment, but the Court passed an order confirming the attachment on the 20th November 1880. In 1881 *B* filed a regular suit

[I. L. R., 12 Bom, 320

53. ——————— *Exclusion of time taken*

then in force, the claim was clearly time-barred.

54. ——————— *Appeal preferred to wrong Court through mistake of law—Exclusion of time*—S. 14 of the Limitation Act (XV of 1877)

55. ——————— *Suit for rent from alleged mal land—Deduction.*—Where a plaintiff claims rent on account of lands as mal from defendants, who set up a lakhiraj title and produced lakhiraj sanads

LIMITATION ACT, 1877—*continued.*

in support, he has first of all to prove that he has collected rents from the lands as mal within twelve years of the suit; and in calculating the period of limitation, the plaintiff is not entitled to deduction on account of the periods of pendency of suits for rent and for small portions for the land, they not being suits for the same cause of action. PRODHAN GOPAUL SINGH *v.* BHOOP ROY OJHA [9 W. R., 570

56. ——— *Deduction of time suit is pending in Court without jurisdiction.*—Where limitation is pleaded, a plaintiff was not entitled, under s. 14, Act XIV of 1859, to deduction for the time

57. ——— *Deduction of time suit was pending.*—In a suit by an executrix, to recover,

plaintiff it was contended that the operation of the Limitation Act was suspended from 1844 until 1867, by reason of the pendency of an equity suit, commenced by bill filed by the present first defendant against the testator, to set aside the deeds of October 1837 and April 1840, which bill was dismissed by consent in June 1867. *Held* (reversing the decision of the lower Court) that these proceedings had no such effect, that the plaintiff might have brought a suit for ejectment at any time; and that the present suit was barred. TRANQUEBAR SAMI AYYAN *v.* NATHAMBEDU AMMAI AMMAL . 6 Mad., 234

58. ——— *Deduction of time during which former suit for rent was pending which was dismissed for non-joinder of parties.*—In suits by the Receiver of the Tanjore estate to recover rent due

annual rent, the defendants pleaded limitation as to part of the rent claimed. The plaintiff claimed

to decide them, but did decide them. MORRIS *v.* SIVARAMAYYAN . . . 7 Mad., 242

LIMITATION ACT, 1877—*continued.*

59 ———

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Limitations from running against him. PARAKUT ASSEN CUTTY *v.* EDAPALLY CHENNEN [2 Mad., 266

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to the indulgence given by the aforesaid section, even assuming that section to be applicable to suits to contest the order under s. 246, Act VIII of 1859. FUTTEH RAM *v.* MONOHUR LALL . 3 Agra, 3

61. ——— *Deduction of time for appeal from order under s. 246, Civil Procedure Code,*

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62. ——— *Suit brought in wrong Court.*—Where a plaintiff, relying upon the defendant's representation as to the latter's place of residence, brought his suit in a Court which had not jurisdiction, the time of the pendency of the suit in

[10 W. R., 68

The words "or other cause of a like nature," in s. 14, exclude many of the causes which were held to come within the meaning of the corresponding section of the Act of 1859.

63. ——— *"Other cause."*—The words "or other cause" in s. 14, Act XIV of 1859, applied to cases where the action of the Court was prevented by causes not arising from laches on the part of the plaintiff,—in other words, by accidental circumstances beyond his control. LUCHMUN PERSHAD *v.* NIMHOO PERSHAD . . 17 W. R., 266

RAMAKRISTNACASTRULU *v.* DARBA LAKSHMIDEVAMMA . . . . . 1 Mad., 320

as where the former suit had been dismissed as not having been brought in proper form. KERAMUT HOSSEIN *v.* GOLAP KOONWAR . 3 W. R., 101

LIMITATION ACT, 1877—*continued.*

64. ———— *Other causes of a like nature—Suit wrongly non-suited.*—Where a suit was non-suited wrongly on a point unconnected with

65. ———— *Other causes of a like nature—Suit against wrong party*—For litigation against a wrong party no deduction can be allowed. MUNNA JHUNNA KOONWAR *v.* LALJI ROY [1 W. R., 121

KAVASJI SOREBJI *v.* BARJORJI SORABJI [10 Bom., 224

66. — *Suit on bond against obligor missing—Subsequent suit against his representatives on presumption of his death*—S. 14 of the Act of 1859 was held to apply to a case in which the plaintiff was unable, after due diligence, to procure due service upon the defendant of the summons to appear and answer the claim, and consequently to prosecute the suit to a decision, and would, where a ... inst ... of ... red. ... 1

67. — — — *Deduction of time in suit by adoptive son to set aside alienation by mother.*—No deduction from the period of limitation can be allowed to the adopted son for a period of pendency of suits brought by or against him, to prove or disprove the validity of his adoption. KISHEN MOHUN KOOND *v.* MUDDUN MOHUN TEWAREE [5 W. R., 32

68.

69. ———— *Mesne profits.*—Plaintiff

profits for twelve years prior to suit, excluding from such computation the period of the pendency of the suit for possession from the date of the plaint till the final decree ANNADA GOBIND CHOWDHRY *v.* SWARNAMAYI. ABHAY GOBIND CHOWDHRY *v.* SWARNAMAYI . . B. L. R., Sup. Vol., 7

S. C. UNNODA GOBIND CHOWDHRY *v.* SURNOMOYEE OBHOY GOBIND CHOWDHRY *v.* SURNOMOYEE [W. R., F. B., 163

70. ———— *Deduction of period oc-*

LIMITATION ACT, 1877—*continued*

profits. HURRO CHUNDER ROY CHOWDHRY *v.* SOORADHONEE DEBIA [B. L. R., Sup. Vol., 985; 9 W. R., 402

71. ———— *Deduction of time former*

Held that, in calculating limitation, no deduction

72. ———— *Exclusion of time of proceeding bonâ fide in Court for a cause of like nature to want of jurisdiction*—The plaintiff, on the 31st March 1884, brought a suit in the Small Cause Court on a promissory note, dated the 24th April 1879. In his plaint he omitted to set out certain payments of

LIMITATION ACT, 1877—*continued.*

same trees, he contended that the time occupied in the former suit ought to be excluded in computing the period of limitation prescribed for the second suit. *Held* that the provisions of Act XV of 1877, s. 14, did not apply, and that the time could not be excluded, as the reason why the previous suit was dismissed

74. ——————— *Deduction of time during prosecution of suit with due diligence—Defect of jurisdiction—Cause of like nature.*—On the 2nd of September 1869, a suit was instituted for, among other things, the possession of land claimed under a kobala, dated the 31st October 1867. This suit was dismissed on the ground of misjoinder of causes of action. On the 14th of April 1881, the plaintiff sued for possession of the land only. *Held* that the suit was not barred by limitation, as the plaintiff had, within the meaning of s. 14, been prosecuting his

75. —— ——————— *Exclusion of time of pro-*

recover, with interest, their respective shares of the sum secured. The former suit was dismissed as not being maintainable, and the latter was withdrawn.

v. *Pertab Kairee, I. L. R., 10 Calc., 86,* followed.
NARASIMMA *v.* MUTTAYAN **I. L. R., 13 Mad., 451**

76. ——————— *Deduction of time during prosecution of suit with due diligence—Defect of jurisdiction—Other cause of a like nature—Misjoinder of causes of action and parties.*—Where a previous suit by the same plaintiff against the same defendant has failed by reason of misjoinder of causes of action and parties, the plaintiff in a second suit is not entitled to the extra period of limitation allowed by s 14 of the Limitation Act, since the cause of failure of the previous suit is not due to "defect of jurisdiction" in the Court which entertained the suit, nor is it a cause "of a like nature" thereto *Deo Prosad Singh v. Pertab Kairee, I. L. R., 10 Calc., 86,* dissented from TIRTHA SAMI *v.* SESHAGIRI PAI
[I. L. R., 17 Mad., 299

77. ——— ——— *Multifariousness and misjoinder of parties—"Other cause of a like nature" to defect of jurisdiction—Error in procedure.*—In cases in which s 14 of the Indian Limitation Act, 1877, is pleaded as protecting the plaintiff from the bar of limitation, if there was an inability in the Court to entertain the former suit produced by any cause not connected in any way with want

and causes of action, and there was on the plaintiff's part in the former suit no want of good faith or due diligence, the plaintiff was held entitled to the benefit of the time during which he was prosecuting the former suit, that is, from the time when the plaint in that suit was filed until the time when it was returned to the plaintiffs for amendment. *Chunder Madhub Chuckerbutty v. Ram Coomar Chowdry, B. L. R., Sup. Vol., 553; 6 W. R., 184, Brij Mohan Das v. Mannu Bibi, I. L. R., 19 All., 318; Deo Prosad Sing v. Pertab Kairee, I. L. R., 10 Calc., 86; Bishambhur Haldar v. Bonomali Haldar, I. L. R., 26 Calc., 414, Ram Subhag Das v. Gobind Prasad, I. L. R., 2 All., 622; Jema v. Ahmad Ali Khan, I. L. R., 12 All., 207; Mullick Kefait Hossein v. Sheo Pershad Singh, I. L. R., 23 Calc., 821; Bai Jamna v. Bai Ichha, I. L. R., 10 Bom., 604; Narasimma v. Muttayan, I. L. R., 13 Mad., 431; Tirtha Sami v. Seshagiri Pai, I. L. R., 17 Mad., 299, Subbarau Nayudu v. Yagana Pantulu, I. L. R., 19 Mad., 90, Venkiti Nayak v. Murugappa Chetty, I. L. R., 20 Mad., 48,* and *Assan v. Pathumma, I. L. R., 22 Mad., 494,* referred to MATHURA SINGH *v.* BHAWANI SINGH
[I. L. R., 22 All., 248

78. ——————— *Deduction of period—Defect of jurisdiction.*—In a suit for rent in which

contended that, under s. 14 of the Limitation Act, (XV of 1877), they were entitled to exclude the period during which that suit was pending. *Held* that the plaintiff's claim of set-off was not disallowed on

79. ——————— *Withdrawal of application with leave to renew it—Deduction of time—Civil Procedure Code, 1877, s. 374.*—The rule laid down in s. 374 of the Code of Civil Procedure (Act X

LIMITATION ACT, 1877—*continued.*

Civil Procedure is, in such a case, not removed by s. 14 of the Limitation Act, as causes for which the withdrawal of a suit or application may be permitted are not causes "of a like nature" with defect of jurisdiction PIRJADE *v.* PIRJADE

[I L. R., 6 Bom., 681

80. ——————— *Mistake or want of enquiry—Deduction of time during which plaintiff was prosecuting another suit.*—A plaintiff who through want of enquiry or mistake, brings a suit which he is unable to establish, will not be allowed, on discovering his error and bringing a suit in which he would have been entitled to recover, had he brought it within time, to take advantage of his own mistake to relieve himself from the law of limitation. HURRO PROSHAD ROY *v.* GOPAL DASS DUTT

[I. L R., 3 Calc, 817: 2 C. L. R., 450

S C. on appeal to Privy Council

[I. L. R., 9 Calc., 255
12 C. L R., 129
L. R, 9 I. A., 82

81. ——————— *Suit in foreign Court,*

82. ——————— *Deduction of time pending suit*—A plaintiff is entitled to deduction from the period of limitation of the period of pendency of a former suit in which he as defendant was urging the same claim as he afterwards prefers as plaintiff. JUGTENDER BUNWAREE *v.* DIN DYAL CHATTERJEE

[1 W. R., 310

1. ——————— s. 15—*Deduction of time injunction afterwards dissolved has been in force.*—

[I. L. R., 6 Bom., 20

2. ——————— *Injunction to restrain partner collecting debts—Suit by receiver.*—In a suit brought in 1880 by the widow of a deceased partner, to wind up a partnership, the surviving partner was prohibited by the Court, at the instance of the plaintiff, from collecting debts due to the firm; but leave was given to apply for the recovery of

LIMITATION ACT, 1877—*continued.*

was not barred SHUNMUGAM *v.* MOIDIN

[I. L. R., 8 Mad., 229

3. ——————— *Period of time injunction*

4. ——————— *Order prohibiting creditor from recovering debt—Attachment of debt—Civil Procedure Code, s. 268—Injunction or order staying suit.*—*Semble*—An order of attachment under s 268 of the Civil Procedure Code is not an injunction or order staying a suit within the meaning of s. 15 of the Limitation Act (XV of 1877). SHIB SINGH *v.* SITA RAM . I. L. R., 13 All, 76

5. ——————— *Attachment of debt secured by bond—Civil Procedure Code, ss 268, 485, 486—*

followed. COLLECTOR OF ETAWAH *v.* BETI MAHARANI . . . . I. L. R., 14 All, 162

6. ——————— *Civil Procedure Code (1882), ss 268, 485, and 486—Attachment of debt by third party—Order staying institution of suit by creditor against debtor—Right of suit.*—An

Sita Ram, I. L. R., 13 All., 76, referred to and approved,—the same rule relating to all attachments,

ETAWAH . . . . I. L. R., 17 All, 198
[L. R., 22 I. A., 31

LIMITATION ACT, 1877—*continued.*

1. ———— s. 17—*Suit for account against manager of company—Accrual of right on death*

tion has been taken out to such manager's estate. LAWLESS v. CALCUTTA LANDING AND SHIPPING CO., LD. CALCUTTA LANDING AND SHIPPING CO., LD. v. LAWLESS . . . I. L. R., 7 Calc., 627

2. ———— *Suit against the representatives of deceased person.*—Where the defendant in a suit died before the plaint against him was filed, and the suit was some time after carried on against his representatives, the time during which the suit was being prosecuted *bonâ fide* against the dead man may be deducted in calculating the period of limitation against his representatives. MOHAN CHAND KANDU v. AZIM KAZI CHOWKIDAR
[3 B. L. R., A. C., 233: 12 W. R., 45

3. ———— *Death of partner—Subsequent recovery of asset by surviving partner—Suit by administrator of deceased partner against surviving partner for recovered assets—Suit for partnership account—Form of decree.*—In 1889 one *H*, a

that she had adopted one *P*, the brother of the second defendant. On the 13th February 1890, the

ephew), letters *K* was by her

father and others, in which they denied that *K* was her heir, and alleged that *P* had performed her funeral ceremonies. The matter came on as a suit on the 19th February 1894, when an order was made, without prejudice to any of the questions raised by the issues, dismissing the application and ordering letters of administration to *H*'s estate to

debts due to that firm. Disputes subsequently arose between *B* and *G*, and by a consent order of the 22nd July 1893 it was ordered that any moneys recovered in the said three suits should be paid over to a receiver (defendant No. 3), to be held by him until further order. On the 1st August 1893, consent decrees were passed in the above three suits for a total sum of R28,335, which was forthwith handed over to the receiver. On the 22nd April 1894, this suit was filed by the Administrator General of Bombay as administrator of *H* appointed as above stated. He claimed to recover the whole sum paid to the receiver, alleging that the first and second defendants as *H*'s partners were largely indebted to the firm, and that the money really belonged to her estate.

ation. *Held* that s. 17 of the Limitation Act (XV of 1877) applied, and that under its provisions the suit was not barred. RIVETT CARNAC v. GOCULDAS SOBHANMULL . . I. L. R., 20 Bom., 15

———— s. 18 (1871, s. 19; 1859, s. 9).

1. ———— *Fraud—Want of knowledge of rights.*—S. 9, Act XIV of 1859, was only applicable when the plaintiff had been kept from a knowledge of his rights by means of fraud. MUKSOOD ALI v. GOWHUR ALI . W. R., 1864, 364

2. ———— *Fraud—Person with means of knowledge.*—When he was or had been in a position in which he might have known of the fraud and ought to have done so, s. 9, Act XIV of 1859, was not applicable, his knowledge must be presumed. INDROBHOOSUN DEB ROY v. KENNY
[3 W. R., S. C. C. Ref., 9

3. ———— *Fraud—Cause of action—Act I of 1845, s. 29.—Semble*—S. 19 of Act IX of 1871 was applicable only to those cases where the fraud was committed by the party against whom a right is sought to be enforced. *Per* MITTER, J.—*Quære*—Whether, if the plaintiffs' case were established, their claim would not be saved from the operation of the Law of Limitation by s. 29, Act I of 1845. RAMDOYAL KHAN v. AJOODHIA RAM KHAN . I. L. R., 2 Calc., 1; 25 W. R., 425

4. ———— *Suit against auction-pur-*

5. ———— *Fraud—Person kept from knowledge of fraud.*—Where a plaint sufficiently alleged that the plaintiffs being entitled to property were ousted from its enjoyment under colour of a fictitious revenue sale in pursuance of a fraudulent

LIMITATION ACT, 1877—*continued.*

.fraud from a knowledge of their right of action, and brought the case within Act XIV of 1859, s. 9. DWARKANATH BHOOYA *v.* AJOODHYA RAM KHAN [21 W. R., 109

See ROBERT *v.* LOMBARD [1 Ind. Jur., N. S., 192

6. ——————— *Fraud—Concealment of cause of action.*—In a suit to recover landed and other property to which plaintiff made title by in-

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of 1859, s 9 HOSSEIN BUKSH *v.* TUSSUDUCK HOSSEIN . . 21 W. R., 245

was put in possession of a portion of the land On

[I. L. R., 7 Bom., 542

No limitation does apply to such applications *See* COLLECTOR OF BROACH *v.* DESAI RAGHUNATH [I. L. R., 7 Bom., 546

9 ——————— *Fraudulent concealment of "necessary document"*—*Cause of action* —Upon the construction of the passage in s. 9 of Act XIV of 1859 "If any document necessary for establishing such right shall have been fraudulently concealed,"—*Held* that the preceding words of the section show

LIMITATION ACT, 1877—*continued.*

clearly that the document must have been fraudulently concealed from the knowledge of the plaintiff; he must, through the fraudulent concealment, be unaware of its existence, and when this is so, the

document necessary considered MUNGAMURU ANANTA LAKSHMINARASU PANTALU *v.* YARLAGEDDA ANKINID . . . . 7 Mad., 22

10. ——————— *Notes lost or plundered in Mutiny.*—*Held* that the limitation applicable to suits for recovery of notes lost or plundered during the Mutiny is six years, and that this should be computed from the time of the losers having requisite knowledge to institute legal proceedings ALI NUQUEE *v.* BHUGWAN DAS . 1 Agra, 213

11 ——————— *Landlord and tenant—Sale by landlord of land held by tenant—Fraud in such sale—Suit by purchaser against tenant—Plea by tenant impeaching sale by his landlord* —The

to the plaintiffs was fraudulent, and that no consideration had been paid This suit, however, was withdrawn by the defendant on the 15th November 1881, with leave to bring a fresh suit, but no fresh suit was brought by him within three years from November 1881, nor was any suit brought by the plaintiff's vendors to set aside their sale to the plaintiffs. In 1883 the plaintiffs brought this suit against the defendant to recover R960 as arrears of rent for four years for the lands described in their

lease the defendant had contracted to pay R240 annually The defendant in his defence again raised the question whether the sale to the plaintiffs was not fraudulent and without consideration *Held* that the right of the defendant to plead as a defence to this suit, that the plaintiff's purchase of the 12th September was fraudulent and void, was barred. As a tenant he had no independent right to impeach the sale by his own landlords He could only do so with their consent, assuming it to be still open to them to impeach it. But their complaint to the Mamlatdar in 1879 showed that they were then acquainted with the facts which entitled them to set aside the sale, and by the end of 1882, at the latest, their right to file a suit for that purpose was therefore barred Their right to impeach the sale by suit being thus barred, their tenant (the

LIMITATION ACT, 1877—*continued.*

defendant) could not be allowed to impeach it as a defence to an action by the plaintiffs. JUGALDAS v. AMBASHANKAR . . I. L. R., 12 Bom., 501

12. ———— and art. 166—*Civil Procedure Code (Act XIV of 1882), ss. 311, 312—Sale in execution—Application to set aside—Fraud.*—An application under s. 311 of the Civil Procedure Code to set aside a sale cannot be made after the expiry of thirty days from the date of such sale

been confirmed an application had been made al-

tion if sufficient cause under s. 18 of the Limitation Act were made out. GOBIND CHUNDRA MAJUMDAR v. UMA CHARAN SEN I. L. R., 14 Calc., 679

13. ———— *Application by judgment-debtor to set aside sale on ground of fraud—Concealment of right to set aside sale.*—When a judgment-debtor makes an application to have an execution-sale set aside under s. 311 of the Civil Procedure Code after the expiry of the period of limitation prescribed in art. 166, sch. II of the

fraud further and show that the existence of his right to set aside the sale has been kept concealed from his knowledge by the fraud of the decree-holder or the auction-purchaser KAILASH CHANDRA HALDAR v. BISSONATH PARAMANIC

[1 C. W. N., 67

14. ———— *Fraud—Knowledge kept*

brother *B* carried on an extensive business in Bombay and in China. The defendant and another brother (*A*) carried on a separate business under the name *A H.* In December 1866 *B* became insolvent and

The defen- ... un pro- ... solvent ... editors. ... nt was possessed of a very large amount of property, and that, being unwilling to meet his liabilities, he and his son and his two brothers, viz., *A* and the defen-

The plaintiff now alleged that shortly before the hearing of that suit, and subsequently, he had obtained information which led him to believe that the defendant had obtained some of the insolvent's property for which he was accountable The defendant had been made a party to the former suit, No 473 of 1881, for the purpose of discovery only, and it was in the course of such discovery being given that some of the above information had been obtained. The plaint then set forth, in detail, the various items of claim in respect of which the plaintiff sought to make the defendant liable. The defendant pleaded that the claims were barred by limitation. *Held*

required by s 18 of the Limitation Act is not mere

to show that the injured complainant has had clear and definite knowledge of the facts, constituting the fraud, at a time which is too remote for the suit to

the insolvent, after the date of the insolvency affirmed. RAHIMBHOY HABIBBHOY v. TURNER

[I. L. R., 17 Bom., 341
L. R., 20 I. A., 1.

Affirming on appeal RAHIMBHOY HABIBBHOY v. TURNER . . . I. L. R., 14 Bom., 408

15. ———— *Salt Act (XII of 1882)—*

LIMITATION ACT, 1877—*continued.*

the Indian Salt Act (XII of 1882) are not affected by that section. QUEEN-EMPRESS *v.* NAGESHAPPA PAI [I. L. R., 20 Bom., 543

——— s 19 (1871, s. 20; 1859, s. 1, cl. 15, and s. 4).

See ACCOUNT STATED. [I. L. R., 22 Bom., 513

See BENGAL RENT ACT, 1869, s. 30. [I. L. R., 5 Calc., 303

See CIVIL PROCEDURE CODE, s. 258. [I. L. R., 16 All., 226

See CONTRACT ACT, s. 25. [I. L. R., 4 Calc., 500 I. L. R., 6 Bom., 683

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED AND UNREGISTERED DOCUMENTS. [I. L. R., 18 Bom., 614 I. L. R., 21 Bom., 201

See STAMP ACT, 1879, s. 34. [I. L. R., 18 Bom., 614

See STAMP ACT, 1879, SCH. I, ART. 1. [I. L. R., 15 All., 56

1 ACKNOWLEDGMENT OF DEBTS.

This section, like s 4 of the Act of 1859 and s 20 of that of 1871, requires a distinct acknowledgment.

1. ——— *Oral evidence of acknowledgment—Acknowledgments made before the coming into force of Act XV of 1877.*—Under s. 19 of the Limitation Act (XV of 1877), oral evidence of the contents of an acknowledgment cannot be received, nor is there any saving of acknowledgments received or given back before the Act came into operation ZIULNISSA LADLI BEGAM *v.* MOTIDEV RATANDEV [I. L. R., 12 Bom., 268

2. ——— *Distinct acknowledgment.*—Act XIV of 1859 required a distinct acknowledgment of a debt as due by the person who makes the acknowledgment to entitle the creditor to a fresh period of limitation KALAI KHAN *v.* MADHO PERSHAD . . . . 3 N. W., 120

ROW *v.* HACHAPA SUGAPA . . 2 Mad., 307

It is not necessary to specify the precise amount of the debt.

4. ——— *Acknowledgment of debt*—Where a plaintiff sued for a debt due under a kararnama,—*Held* that in order to bring the case within the exception in the law of limitation, it was sufficient to show, by clear and positive proof, that within the period prescribed he had asserted his right to his claim under the kararnama, and that the defendant admitted this claim to be as of right. It was not necessary that a precise sum should have been mentioned by either party, or that a promise to pay should have been made by the defendant GUTIKISHEN GOSWAMI *v.* BRINDABUN CHANDRA SIRKAR CHOWDHRY . . 3 B. L. R., P. C., 37

S C GOPEE KISHEN GOSHAMEE *v.* BINDABUN CHUNDER SIRCAR CHOWDHRY 12 W. R., P C., 36 [13 Moore's I. A., 37

Contra, NOBIN CHUNDER MOZOOMDAR *v.* KENNY [5 W. R., S. C. C. Ref, 3

5. ——— *Promise to pay debt of third person.*—A promise to pay a third person's debt would be sufficient, though the amount were not ascertained PEAREE LALL SHAHA *v.* WOOMESH CHUNDER MOZOOMDAR . . . 9 W. R., 140

6. ——— *Letters containing no precise sum or promise to pay.*—In a suit for the price of goods, the period of limitation had expired, but the Court held that certain letters written by the defendant to the plaintiffs, though they contained no mention of the sum due, nor any promise to pay, were a sufficient acknowledgment of the debt under s 4, Act XIV of 1859 HARRISON *v.* HOPE [9 B. L. R., Ap., 43

7. ——— *Want of assent to amount acknowledged.*—A creditor who does not openly assent to an amount acknowledged by his debtor to be due to him is nevertheless entitled to take advantage of such acknowledgment so long as it remains uncontradicted and unexplained by his debtor LALJEE SAHOO *v* ROGHOONUNDUN LALL SAHOO [I. L. R, 6 Calc., 447

8. ——— *Letter in indefinite terms.*—A letter containing no distinct admission of a debt, but only doubtful expressions, *held* not to be a written acknowledgment such as s. 4, Act XIV of 1859, requires for the revival of a right of suit. GASH *v.* MCLEAN . . . 2 N. W., 403

9. ——— *Acknowledgment inferred from tenor of correspondence.*—An acknowledgment not coming directly from the debtor himself, but merely deduced as an inference from the tenor of a series of letters, was not a sufficient acknowledgment to satisfy s. 4, Act XIV of 1859 To satisfy that section, there must be some principal writing of a particular date, which can be relied on by itself, when properly construed, as constituting an acknowledgment of the debt. ROGERS *v.* MONTRIOU [6 B. L. R., 550

10. ——— *Suit for arrears of rent—Limitation Act, sch. II, art. 110.*—The plaintiffs sued the defendants for arrears of rent from the 4th December 1889 to the 31st July 1894, relying upon the following letter as an acknowledgment sufficient to take their demand out of the Limitation Act: "As

LIMITATION ACT, 1877—*continued.*

1. ACKNOWLEDGMENT OF DEBTS—*continued.*

we have informed your client, we are quite willing to pay him the rent due under our mourasi pottah if he can show a title to give us a good receipt for it that will satisfy our lawyers. If he is in the same position that his father was up to the time of his death unable to produce a perfect title, we are still willing to pay him the rent on his giving us a substantial indemnity similar to that which we had from his father." *Held* that this was a sufficient acknowledgment within s. 19 of the Limitation Act. RUNGO LALL LOHEA *v.* WILSON

[I. L. R., 26 Calc., 204
2 C. W. N., 718

11. ——— *Law under Panjab Code —Acknowledgment.*—Under the Punjab Code, and before Act XIV of 1859 took effect in Oudh, letters offering to pay a debt by instalments, and praying to be excused from the payment of interest, were an ample acknowledgment of the debt to save limitation. MUKHUM LALL *v.* IMTIAZOODDOWLAH

[5 W. R., P. C., 18; 1 Ind. Jur., N. S., 142
10 Moore's I. A., 362

12. ——— *Letter with remittance "on*

reversing the decision of NORMAN, J) the words "remittance of £40 to old account" were ambiguous, and did not necessarily import that a further sum was due, so as to constitute an acknowledgment of a debt which would give a new period of limitation. SHEARMAN *v.* FLEMING . 5 B. L. R., 619

13. ——— *Admission of debt with averment it is not due.*—An admission of a debt with

an event future and uncertain is not an acknowledgment of a debt, but the allegation of incidents out of which a debt may at some time arise. YOUNG *v.* MANGALAPILLY RAMAIYA 3 Mad., 308

14. ——— *Bom. Reg. V of 1827, s. 7, cl. 1—Acknowledgment.*—*Held* that an admission in writing of the making of a promissory note, accompanied by a repudiation of liability in respect thereof, was not such an acknowledgment as would revive a barred claim. NARBADASHANKAR *v.* RUGHNATH ISHVARJI . . 2 Bom., 349

15. ——— *Admission of debt to third person.*—The admission to a third party in writing that a sum is due is not such an acknowledgment of a debt as to remove such debt out of the Statute of Limitations. PERSHAD DOSS *v.* DENONATH DEY

[2 Hyde, 14

IN THE MATTER OF THE GANGES STEAM NAVIGATION COMPANY . 2 Ind. Jur., N. S., 180

16. ——— *Admission to third person.*—An admission by *A* of his debt to *B* contained in a burat given by *A* to his agent may take a suit against *A* out of the Statute of Limitations. HURO CHUNDER ROY *v.* MONEE MOHINEE DOSSEE

[3 W. R., S. C. C. Ref., 6

17. ——— *Admission to third person.*—An acknowledgment made in writing to a third party and not to the creditor is sufficient under the section. *Quære*—Whether an acknowledgment to satisfy the section must be made before suit. The English and Indian law of limitation considered and contrasted. NIJAMUDIN *v.* MAHAMMADALI

[4 Mad., 385

18. ——— *Admission—Exemption from limitation.*—In a suit for the recovery of costs

claimable from some quarter or other, but not as against the property in question, was held not to be

19. ——— *Memo. of payments endorsed on bond.*—Memoranda of payments made, en-

20. ——— *Verbal admission of correctness of account.*—A mere verbal admission of the correctness of an account, the items of which are barred by the Statute of Limitations, does not furnish a new starting-point for the operation of the statute. SUBBARAMA *v.* EASTULU MUTTUSAMI 3 Mad., 378

21. ——— *Admission of balance of account.*—When an indigo planter and a raiyat contract, the former to make advances of money or seed for the cultivation of indigo plant, and the latter to deliver the indigo plant grown, a mere verbal admission by the raiyat of the correctness of an account containing cross items due, without a written acknowledgment from him that the balance is due, does not operate to create or renew any liability with reference to the law of limitation. DOYLE *v.* ALLUM BISWAS . . . 4 W. R., S. C. C. Ref., 1

DOYLE *v.* EDOO GAZEE

[3 W. R., S. C. C. Ref., 13

22. ——— *Suit for balance of account—Balance struck and amount orally admitted.*—In a suit for the recovery of certain sums advanced as loans at different times the account

LIMITATION ACT, 1877—*continued.*

1. ACKNOWLEDGMENT OF DEBTS—*continued.*

as to revive the old cause of action. KUNHYA LALL v. BUNSEE . Agra, F. B., 94 : Ed. 1874, 71

23. ———— *Commission agent*—A acted as commission agent for *B* and *C*. *A* furnished

suit against *B* and *C* in September 1882 for a balance due to him *Held* that *B* and *C* had made an acknowledgment of their debt to *A*, and that the suit was not barred by limitation. SITAYYA v. RANGAREDDI . I. L. R., 10 Mad., 259

24. ———— *Acknowledgment within "the new period."*—In a suit brought on the 20th July 1886, by the plaintiff, to recover the price of

The Subordinate Judge, being of opinion that the suit was barred, referred the case to the High Court. *Held* that the suit was not barred, the second acknowledgment, having been made within "the new period" arising from the first acknowledgment, was made within a period prescribed for the suit, and was therefore itself the starting point of a new period. ATMARAM v. GOVIND [I. L. R., 11 Bom., 282

borrowed R1,045 from you from time to time for my private expenses. I have passed you no bond for

26. ———— *Verbal promise to pay—New contract.*—In a suit by the plaintiff to recover money lent more than three years before suit, the plaintiff alleged an express verbal promise by the debtor to pay the amount sued for made upon a settlement of accounts. *Held* by HOLLOWAY and KINDERSLEY, JJ.—That a verbal promise was not sufficient to prevent the application of the Act of Limitation. *Per* KINDERSLEY, *J.*—If a debtor and creditor enter into

27. ———— *Acknowledgment to third*

owing, and that there is an existing obligation to pay it NIJAMUDIN v. MAHAMADALI 4 Mad., 385

28. ———— *Promise to pay sum for*

S. C. WOOMESH CHUNDER MOOKERJEE v. SAGEMAN [12 W. R., O. C., 2

See GOPIKISHEN GOSWAMI v. BRINDABUN CHANDRA SIRKAR CHOWDHRY [3 B. L. R., P. C., 37 : 12 W. R., P. C., 36 13 Moore's I. A., 37

29. ———— *Admission in bill of*

1863, contained a covenant to pay off the principal and interest at the expiration of a year, and gave a power of sale in default of payment. The whole property, including the mortgaged portion, was conveyed to one *I D* on 27th November 1864, by a bill of sale executed by the three owners of the property On the execution of the bill of sale, the sum of R16,250, the half of the purchase-money which belonged to the defendant, was handed over to the plaintiff in part-payment of a sum of R19,555, which was therein recited as being then due on the mortgage. In a suit for the balance brought in November 1869, the defence was that it was barred by the law of limitation. *Held* that the admission by the defendant contained in the bill of sale of November 1864 was a sufficient acknowledgment to take it out of the operation of Act XIV of 1859, s. 4. MADHUSUDAN CHOWDHRY v. BRAJANATH CHANDRA [6 B. L. R., 299

30. ———— *Admission in writing*—In a suit to recover the balance alleged to be due on certain promissory notes, the plaintiff relied on a document to prevent the operation of Act XIV

LIMITATION ACT, 1877—*continued.*

1. ACKNOWLEDGMENT OF DEBTS—*continued.*

1859, which was in these terms "If I have to stump up, the sooner it is done the better, though it would go against all my ideas of justice and right." *Semble*—There was no admission that a debt was due. UNCOVENANTED SERVICE BANK *v.* MARSHALL [6 N. W., 306

31. ——— *Admission in writing.*—A debt due on a decree is a sufficient consideration for the making of a promissory note, although execution of the decree be barred by limitation at the time the note is made. Where the endorsee of certain promissory notes sued to recover their value, alleging that in respect of four of the notes a new period of

must only say that Mr. *S* must trust to my integrity to pay him, and as soon as I have cleared off a couple of decrees against me, I will commence paying him; but if you put the matter in Court, I must only

32. ——— *Suit for compensation for land—Acknowledgment in writing.*—*Held*, in a suit for compensation for lands taken by Government under Act VI of 1857, that a letter from the Commissioner of Revenue expressing his willingness to recommend Government to pay for certain land is not an acknowledgment in writing within s. 4 HILLS *v.* MAGISTRATE OF NUDDEA . . 11 W. R., 1

33. ——— *Acknowledgment in writing*—*R*, who owed *V* money, drew a hundi in favour of *V*, which was dishonoured *V* sued *R* to recover the sum for which the hundi had been drawn. Within three years before suit *R* wrote a letter to the drawee of the hundi requesting him to pay the amount due by *R* upon the hundi. *Held* that the letter was a sufficient acknowledgment, within the meaning of s 19 of the Limitation Act, 1877, of *R*'s liability for the debt for which the hundi was drawn. RAMAN *v* VAIRAVAN I. L. R, 7 Mad., 392

34. ———

writing
said to be
obligor and
which he was not a party. *Held* that an acknowledgment in order to satisfy the requirements of Limitation Act, s. 19, must be an acknowledgment of the debt as such and must involve an admission of a subsisting relation of debtor and creditor, and an

a third party. VENKATA *v.* PARTHASARADHI [I. L. R., 16 Mad., 220

ation the plaintiff relied upon an admission of the debt in a draft will, written by the testator, in the first line of which his name appeared. *Held per* WEIR, *J.*, that the admission in the will did not constitute an acknowledgment under Limitation Act, s. 19 RAMASAMI *v.* MUTTUSAMI [I. L. R., 15 Mad., 380

36. ——— *Acknowledgment of liability in petition—Liability for contribution—Joint debtors.*—By a payment into Court under an order on account of decrees for rent and revenue in arrear, due to the landlord zamindar from the joint

Act, 1877. More than three years before this

[L. R., 25 I. A., 95
2 C W. N., 402

37. ——— *Post-card sent by defendant to plaintiff*—In a suit for R465 the defendant pleaded limitation. In reply the plaintiff relied on an acknowledgment of the debt given by the defendant. The alleged acknowledgment was written on a post-card sent by the defendant to the plaintiff. It was in Gujarati, and was as follows:—"I was bound to

entertain any anxiety whatever in respect thereof.

LIMITATION ACT, 1877—*continued*

1. ACKNOWLEDGMENT OF DEBTS—*continued.*

As to whatever debts may be due by my old man, I am bound to pay the same so long as there is life in me. This is, indeed, my earnest wish After this, God's will be done Therefore I will positively pay R30." The post-card bore on it also the words "without prejudice" in English The lower Courts held that it was therefore inadmissible in evidence,

acknowledgment of the debt claimed by the plaintiff, which was therefore barred by limitation. MADHAVRAV GANESHPANT OZE *v.* GULABBHAI LALLUBHAI [I. L. R., 23 Bom., 177

38. ———— *Unstamped acknowledgment of debt—Stamp Act (I of 1879), sch I, art. 1.*

But *see* FATEH CHAND HARCHAND *v* KISAN [I. L. R., 18 Bom., 614

39. ———— *Default on payment of*

plaint set out the provisions of the bond, and stated

the plaint did not contain such an acknowledgment of the whole debt being due as to give a new starting point from which the limitation commenced to run. NARAYANAPPA *v.* BHASKAR PARMAYA [7 Bom, A. C., 125

40

1877, s. 19. VENKATAGIRI RAJA *v.* BADE SAHEB [I. L. R., 22 Mad., 32

41 ———— *Admission after execution of decree.*—The admission of a debt after execution is taken out gives a decree-holder a fresh starting point from which to reckon limitation. DIGAMBUREE DEBIA *v.* SARODA PERSHAD ROY [3 W. R., Mis, 27

JOTEERAM DOSS *v.* HURUP . 6 W. R., Mis., 115

LUCHMEE NARAIN *v.* SHUDASHEO SINGH [5 W. R., Mis., 12

PROSUNNO COMMAR ROY CHOWDHRY *v.* KASHEE KANT BHUTTACHARJEE . . 5 W. R., Mis., 31

CHUNDER KANT MITTER *v.* RAMNARAIN DEY SIRCAR . . . . 8 W. R, 63

42. ———— *Instalment bond—New contract*—An instalment bond is not "a promise or acknowledgment" within the meaning of Act IX of 1871, s 20, but is complete in itself and does not require any reference to the old bond which it supersedes It is a new contract with new stipulations and terms, and limitation runs from the due dates therein mentioned TARA SOONDUREE KULOONEE *v.* BHOODUN CHUNDER GHOSE 23 W. R, 462

43. ———— *Admission of debt—Peti-*

decree-holder and declared in Court. PEAREE MOHUN MITTER *v* MOHENDRO NARAIN SINGH [23 W. R., 465

44. ———— *Signature not by debtor.*—A letter not signed by the debtor was not an acknowledgment in writing within the meaning of s. 4, Act XIV of 1859. RAMNARAIN *v.* HUREE DASS [3 Agra, 81

45. ———— *Acknowledgment not signed* —An acknowledgment in writing sealed, but not signed, by a defendant, was not an acknowledgment within the meaning of s. 4, Act XIV of 1859 LUCHMUN PERSHAD *v* RUMZAN ALI [8 W. R., 513

46 ———— *Signature not formally*

construction, acknowledged and admitted that the debt or a part thereof is due from him This signature need not be formally subjoined or added to an

acknowledgment in writing within the meaning of s. 4. MUHAMMAD JANULA *v.* VENKATARAYAR [2 Mad., 79

47. ———— *Signature by mark—*

[7 Mad., 358

48. ———— *Suit for balance of account for advances.*—In a suit to recover a balance on account of indigo advances made on a kabulist executed by a defendant, where defendant had broken no contract, but the discontinuation of the cultivation had been the act of the plaintiff, limitation was held

LIMITATION ACT, 1877—*continued.*

1. ACKNOWLEDGMENT OF DEBTS—*continued.*

to run from the date of the kabuliat which operated as a written acknowledgment signed by defendant (s. 4, Act XIV of 1859). *Held* too that a statement of balances found in one of plaintiff's books duly verified, without any signature by defendant (who

[10 W. R., 263]

49. ——————— *Acknowledgment of debt—Secondary evidence of acknowledgment—Authority to bind minor by acknowledgment*—An original account book containing an acknowledgment of a debt had been filed in Court, and subsequently lost whilst in Court. *Held* that secondary evidence of such acknowledgment might be given, notwithstanding the words of s. 19 of the Limitation Act. A person merely by reason of being the mother and guardian of a minor has no authority to make an acknowledgment of a debt on behalf of the minor so as to give a creditor a fresh start for the period of limitation. WAJIBUN *v.* KADIR BUKSH

[I. L. R., 13 Calc., 292

50. ——————— *Acknowledgment—Entry of a debt in a debtor's book.*—An entry in a debtor's own book does not amount to an acknowledgment within the meaning of s 19 of Act XV of 1877, unless communicated to his creditor or to some one on his behalf,—Explanation 1 to s. 19 showing that

what part of the document the signature is placed MAHALAKSHMIBAI *v.* FIRM OF NAGESHWAR PURSHOTAM . I. L R., 10 Bom., 71

51. ——————— *Application by judgment-debtor for postponement of sale.*—An application by the defendant for a postponement of the sale of his property when he promised to pay the amount of the decree was held to be an admission of the plaintiff's right to execute the decree within the

CHETTI SUBRAMANIAN CHETTI *v.* PERIAVENKAN UDAYA TEVAR . I. L. R., 20 Mad., 239

53. ——————— *Account stated—Signing by debtor.*—Although to make an account a stated account it is not necessary that it should be signed, yet, unless it is signed by the debtor, the intention and effect of s 4 of Act XIV of 1859 is to prevent it being made the foundation of an action to recover a debt which would otherwise be barred by that Act. MULCHAND GULABCHAND *v.* GIRDHAR MADHAV

[8 Bom., A. C., 6

54. ——————— *Signature*—Where an account stated was written by a debtor himself, by his name at the top of the entry, it was held to be sufficiently signed within the meaning of s. 4 of Act XIV of 1859 ANDARJI KALYANJI *v.* DULABH JEEVAN

[I. L. R., 5 Bom., 88

55. ——————— *Signature.*—Where the whole of an account stated (khata) was written by a debtor himself with the introduction of his name at the top of the entry, the khata was held to be sufficiently signed within the meaning of Act XV of 1877, s. 19. JEKISAN BAPUJI *v.* BHOWSAR BHOGA JETHA . . . . I. L. R., 5 Bom., 89

56. ——————— *"Signing," What amounts to—Signature.*—Certain letters admitting a debt were written by the authority of the debtor, who was a desai. The only words, however, of the letter which were actually in his own handwriting were the words "guru samarth" (the exalted preceptor is strong) at the beginning of each letter, and the words "*kalaye, bahut kay likhne, lobh karava hi vinanti*" (let this be known; what more need be written, keep regard; this is the representation) at the end It was proved by evidence that this was the usual mode of signing and authenticating letters and informal documents among the class to which the defendant belonged. *Held* that, by analogy, the writing of specified words by desais at the top and

signature, is that the signing in such a manner as is usually adopted by the debtor with the view of

57. ——————— *Acknowledgment of guardian for minor.*—The signature of a guardian of a minor to an acknowledgment of a debt does not

LLOYD . . . . . 13 C. L. R., 112

LIMITATION ACT, 1877—*continued.*

1. ACKNOWLEDGMENT OF DEBTS—*continued.*

58. ———— *Acknowledgment signed by agent*.—Under s. 4, Act XIV of 1859, an ... e agent or sufficient.

... O. C., 67

BUDOOBHOOSUN BOSE *v.* ENAETH MOONSHEE [8 W. R., 1

59. ———— *Powers of sarbarakar—Authority of agent—Collector, Notice by, as acknowledgment of debt—Evidence, Admissibility of—Parol evidence.*—A debtor, since deceased, had executed a bond to his creditor The heir of the debtor having been disqualified, and a sarbarakar of the estate having been appointed, the latter had executed a muktarnamah or power-of-attorney empowering an agent to act in reference to the land, and the charges thereon The agent admitted the debt. *Held* that on the construction of the power

ETAWAH . . . . I. L. R., 17 All., 198 [L. R., 22 I. A., 31

CUTTACK . . . . 10 W. R., 175

61. ———— The plaintiff sued three

LIMITATION ACT, 1877—*continued.*

1. ACKNOWLEDGMENT OF DEBTS—*continued.*

bring the case within s. 4 of Act XIV of 1859. ICVARA DAS *v.* RICHARDSON . . 2 Mad., 84

last acknowledgment. Discussion as to who is an

MOHESH LAL *v.* BUSUNT KUMAREE [I. L. R., 6 Calc., 340: 7 C. L. R., 121

63. ———— *Acknowledgment by agent.*—*Held*, upon the evidence in the case, that an acknowledgment of the debt sued for had not been signed by an agent of the defendant, generally or specially authorized in that behalf within the meaning of s. 20, Act IX of 1871 Whatever general authority such agent may once have had from the defendant, it had ceased within the knowledge of the plaintiff at the time of the signature Special

[L. R., 7 I. A., 8

64. ———— *Acknowledgment by agent*—*Signature*.—*B*'s agent, under the orders of *B*,

looking at the heading of the letter, that the letter was "signed" by *B* within the meaning of s 20 of Act IX of 1871. MATHURA DAS *v.* BABU LAL [I. L. R., 1 All., 683

65. ———— *Payment of part of judgment debt by debtor and acknowledgment of his liability by pleader.*—The payment of part of the judgment-debt by the judgment-debtor, with the

VIDYADHAR GOSAVI . I. L. R., 22 Bom., 722

66. ———— *Acknowledgment by agent*—*Plaint signed by vakil.*—A plaint signed by a vakil before the Limitation Act (IX of 1871) came into operation does not save limitation, as the earlier

LIMITATION ACT, 1877—*continued.*

1. ACKNOWLEDGMENT OF DEBTS—*continued.*

Limitation Acts do not give authority to an agent to sign an acknowledgment for his principal similar to that given by s. 20 of that Act and s. 19 of Act XV

they might have been sufficient under Act IX of 1871. DHARMA VITHAL *v.* GOVIND SADVALKAR [I. L. R., 8 Bom., 99

67. ———— *Acknowledgment—Authorized agent.*—A balance of account was written by a person at the request of an illiterate debtor in the debtor's name, and signed by the writer in his own name. *Held* a binding acknowledgment by a duly authorized agent within the meaning of s. 19, explanation 2 of Act XV of 1877. HEMCHAND KUBER *v.* VOHORA RAJI HAJI . I. L. R., 7 Bom., 515

68. ———— *Signature by agent.*—An application by a judgment-debtor in writing for the postponement of a sale in execution of a decree and

69. ———— *Petition filed on behalf of minor by vakil accompanied by part payment of money due under decree.*—A petition filed on behalf of a minor by his vakil, admitting liability and accompanied by part payment of the money due unde
ment of h
barred.
I L. R
NATH PAHARI *v.* BHUPENDRA NARAIN ROY [I. L. R., 23 Calc., 374

70. ———— *Admission of liability contained in a memorandum of appeal in a different suit—Admission necessary for the pleadings in suit—Authority of advocate or vakil.*—An admission made by an advocate or duly authorized vakil

Act XV of 1877 so as to give a fresh starting point

was not necessary for the purposes of the suit in which it was made. *Ram Hit Rai v. Satgur Rai, I. L. R., 3 All., 247,* followed. HINGAN LAL *v.* MANSA RAM . . I. L. R., 18 All., 384

71. ———— *Manager of joint Hindu family—Agent, Authority of—Principal and agent.*—The relation of the managing member of a Hindu family to his co-parceners does not necessarily imply an authority upon his part to keep alive as against his co-parceners, a liability which would otherwise become barred. The words of s 20 of Act IX of 1871 must be construed strictly, and the manager of a Hindu family as such is not an agent "generally or specially authorized" by his co-parceners for the purpose mentioned in that section. KUMARASAMI NADAN *v.* PALA NAGAPPA CHETTI . . . I. L. R., 1 Mad., 385

72. ———— *Manager of Hindu family—Authority to revive barred debt.*—The manager of a Hindu family has the same authority to acknowledge as he has to create debts on behalf of the family, but has no power, without special authority to revive a claim, already barred by limitation against the family CHINNAYA *v.* GURUNATHAM [I. L. R., 5 Mad., 169

See GOPAL NARAIN MOZOOMDAR *v.* MUDDOMUTTY GOOPTEE . . . 14 B. L. R., 21

73. ———— *Manager of a joint*

to give a new period of limitation against the family from the time the acknowledgment is made. He is an agent duly authorized in this behalf within the meaning of s. 19 of the Limitation Act. *Chinnaya Nayadu v. Gurunatham Chetti, I. L. R., 5 Mad., 169,* approved and followed. BHASKER TATYA SHET *v.* VIJALAL NATHU [I. L. R., 17 Bom., 512

74. ———— *Manager of joint family—Power of manager to revive a time-barred debt.*—The manager of a Hindu family has no power to revive by acknowledgment a debt barred by limitation, except as against himself. DINKAR *v.* APPAJI [I. L. R., 20 Bom., 155

75. ———— *Authority of guardian to acknowledge debt due by minor.*—A guardian has authority to acknowledge a debt on the part of the

KAILASA PADIACHI *v.* PONNUKANNU ACHI [I. L. R., 18 Mad., 456

76. ———— *Authority of guardian to acknowledge debt on behalf of minor—Agent.*—A guardian has no authority to acknowledge a debt on behalf of his ward so as to give the creditor a fresh start for the period of limitation, as he is not an agent on the part of his ward within the meaning of s 19 of the Limitation Act (XV of 1887). *Sobhanadri Appa Rau v. Sriramulu, I. L. R., 17 Mad., 221,* dissented from. RAYMALSINGJI *v.* VADILAL VAKHATCHAND I. L. R., 20 Bom., 61

LIMITATION ACT, 1877—*continued.*

1. ACKNOWLEDGMENT OF DEBTS—*continued.*

77. ——— *Acknowledgment by guardian of minor—Guardians and Wards Act (VIII of 1890), ss. 27 and 29—Act XL of 1858.*—An acknowledgment of a debt by the guardian of a minor appointed under the Guardians and Wards Act does not bind the minor and is not such an acknowledgment under s 19 of the Limitation Act as would give a new period of limitation against the minor CHHATO RAM v. BILTO ALI

[I. L. R., 26 Calc., 51

See also AZUDDIN HOSSEIN v. LLOYD

[13 C. L. R., 112

78. ——— and art. 59—*Prescribed period.*—The expression "prescribed period" in s. 20 (*a*) of the Limitation Act (IX of 1871) means the period prescribed by that Act. Where a suit was brought on the 11th September 1877 for money paid by the plaintiff on the 16th November 1868 to the use of the defendant, and the plaintiff based his

of that Act, *viz.*, three years from the period when the money was paid. LUVAR CHUNILAL ICHHARAM v. LUVAR TRIBHOBAN LAL DAS

[I. L. R., 5 Bom., 688

79. ——— *"Promise"—Suit on bond executed for barred debt—Contract Act, s 25, cl. 3*—The "promise" referred to in s 20 of Act IX of 1871 is a promise introduced by way of exception, in a suit founded on the original cause of action, and ... xting... gly a ... xecu... the ... very.

RAGHOJI BHIKAJI v. ABDUL KARIM

[I. L. R, 1 Bom., 590

80. ——— *Promissory note for barred debt—Contract Act, s. 25, cl 3*—Act IX of 1871, s 20, cl (*a*), does not prevent a plaintiff from maintaining a substantive action on a promissory note passed to secure the amount due on an old note which was barred by limitation at the time of the making of the new, the plaintiff's right to bring such action being recognized by the later enactment, Act IX of 1872, s 25, cl 3 CHATUR JAGSI v. TULSI

[I. L. R., 2 Bom., 230

81. ——— *Acknowledgment of barred decree*—In the case of a decree for money payable by instalments with the proviso that in the event of default the decree should be executed for the full amount, the decree-holder did not apply for execution within three years after default was

such acknowledgment did not create a new period of limitation. SHIB DAT v. KALKA PRASAD

[I. L. R., 2 All., 443

82. ——— *Acknowledgment after period of limitation has expired—Promise to pay—Conditional promise to pay barred debt—Contract Act (IX of 1872), s. 25.*—Where the defendant, after his debt had become barred by limitation, wrote as follows to his creditor in reply to a demand for payment: "I bear the matter in mind, and will do my utmost to repay this money as soon as I possibly can." *Held* that this promise by the defendant was only a conditional promise, *viz.*, to pay when he was able, and the plaintiff having failed to prove the defendant's ability to pay, the promise did not operate, and the plaintiff could not recover. WATSON v. YATES

[I. L. R., 11 Bom., 580

83. ——— *Agent—Signature pro-*

allowed, provided that the acknowledgment of liability is made in writing before the expiration of the period prescribed for the suit, a suit cannot be brought upon an acknowledgment or account stated, signed by a person who has been an agent to collect rents, if his signature was not procured till more than a year after the determination of his agency PARBUTTINATH ROY v. TEJOMOY BANERJI

[I. L. R., 5 Calc., 303

84. ——— *Account stated—Adjusted account—Adjustment of accounts, Effect of—"Ruzu"—Contract Act (IX of 1872), s 25 cl 3*—The "ruzu" or adjustment of an account can operate either as a revival of an original promise or as evidence of a new contract If it is to be used as an

writing duly signed as required by the Contract Act (IX of 1872), s 25, cl 3, a bare statement of an account not being such a promise. RAMJI v. DHARMA . . I. L. R., 6 Bom., 683

85. ——— *Account stated—Promise—Balance admitted due—Baki dera—Act IX of 1872, s. 25*—The Gujarati words "baki dera," which are of common use in balancing accounts, import no more than the English words "balance due," from which an unwritten contract may be inferred, but which do not of themselves amount to a promise to pay within the sense of Act IX of 1872, s. 25 cl. 3 RANCHHODDAS NATHUBHAI v. JEYCHAND KHUSALCHAND . . I. L. R., 8 Bom., 405

See RAMJI v. DHARMA . I. L. R., 6 Bom., 683

86. ——— *Agreement to pay as per account—Acknowledgment of debt.*—The plaintiff

LIMITATION ACT, 1877—*continued.*

1. ACKNOWLEDGMENT OF DEBTS—*continued.*

as receiver to the estate of *S* instituted a suit on the

them to the plaintiff was a sufficient acknowledgment to save the claim for rent from being barred. *Held* that the plaintiff's claim for the portion of rent claimed beyond three years was not barred; the defendants' letters were a sufficient acknowledgment to save limitation; there being an admission that here was an open account between the parties, and that there was a right to have it taken, implied a promise to pay. *Prance* v. *Sympson, 1 Kay, 678,* and *Banner* v. *Berridge, L. R, 18 Ch. D, 254,* referred to FINK v. BULDEO DASS

[I. L. R., 26 Calc., 715
3 C. W. N., 524

87. ——————— sch. II, art. 110—*Contract Act (IX of 1872), s. 25, cl. (3)—Promise to pay a barred debt.*—In defence to a suit for rent a tenant pleaded that a portion of the claim was barred by limitation Plaintiff relied on a letter which had been signed by defendant, after the disputed portion had become barred, and in which the defendant, after referring to the periods in respect of which the arrears of rent were due, said "I shall send by the end of Vysakha month." *Held* that the document contained the ingredients required by s 25, cl. (3), of the Contract Act, and that the claim was not barred by limitation. A document sufficiently complies with s. 25 of the Contract Act when it is signed by the person to be charged, and refers to the debt in such a way as to identify it, and contains a promise to pay wholly or in part the debt referred to therein, or expresses an intention to pay which can be construed to be a "promise" To create a "promise" within the meaning of the section, it is not necessary that there should be an accepted proposal reduced to writing, a written proposal, accepted before action, becoming by the definition clause a promise when accepted. The words of the section show that it is the debt and not a sum of money in consideration of the barred debt that the promisor should refer to APPA RAO v. SURYAPRAKASA RAO

[I. L. R., 23 Mad., 94

88. ——————— *Admission of debt being due in writing itself.*—To bring a case within s. 4, Act XIV of 18 9, the writing must contain within itself an admission that a debt is due, and oral evidence is not admissible to add to its meaning. LUTCHUMANAN CHETTY v. MUTTA IBURAKI MARAKKAYER . . . . . . 5 Mad., 90

89. ——————— *Oral evidence.*—The want of an admission or acknowledgment in writing, as

LIMITATION ACT, 1877—*continued.*

1. ACKNOWLEDGMENT OF DEBTS—*concluded*

required by s. 4, Act XIV of 1859, to qualify the limitation prescribed by cl. 9, s. 1 of that Act, can-

WOOMA SOONDERY DOSSEE v. BIRESSUR ROY

[8 W. R., 289

90. ——————— *Contents of acknowledg-*

and ought not to be read in derogation of the general rules of secondary evidence so as to exclude oral evidence of the contents of an acknowledgment which has been lost or destroyed. SHAMBHU NATH NATH v. RAM CHUNDRA SHAHA . I. L. R., 12 Calc., 267

91

followed. CHATHU v. VIRARAYAN

[I. L. R., 15 Mad., 491

92. ——————— *Registration—Non-registration of kobala, Effect of—Act VIII of 1871, s. 17—Act IX of 1871, s. 20, cl. (c), and s 49.*—Although, under s. 49 of Act VIII of 1871, no instrument which is "required by s. 17 to be registered shall, if unregistered, be received as evidence of any transaction affecting the property to which it relates," this provision does not prevent such an instrument being used for the purpose of showing that a fresh period of limitation has been acquired

LALL v. RAMSOOKHEE KOOER

[I. L. R., 5 Calc., 215: 4 C. L. R., 361

93. ——————— expln. 1—*Acknowledgment in writing.*—In a suit upon a bond brought against the defendant as a principal debtor, an acknowledgment of liability as a surety only is sufficient to save limitation, with reference to s. 19, expln. 1, of the Limitation Act (XV of 1877). UNCOVENANTED SERVICE BANK v. GRANT

[I. L. R., 10 All., 93

2. ACKNOWLEDGMENT OF OTHER RIGHTS.

94. ———————

LIMITATION ACT, 1877—*continued.*

2. ACKNOWLEDGMENT OF OTHER RIGHTS —*continued.*

95. ———— *Landlord and tenant—Acknowledgment of different tenancy.*—Where a landlord sued to recover arrears of rent due from a tenant who entered as a mulgeni tenant for one year and continued in possession without executing a fresh agreement,—*Held* that an admission, made in writing and signed by the tenant, that he held the land as mulgeni or permanent tenant at a lower rent, was not an acknowledgment of the landlord's right, which, under s 19 of the Limitation Act, 1877, would entitle the landlord to recover arrears of rent for three years prior to the date of the admission. VENKATARAMANAYYA *v.* SRINIVASA RAU [I. L. R., 6 Mad., 182

96. ———— *Mortgage—Right to redeem mortgage*—Where a mortgage has not legally been put an end to, the mortgagor (or his representatives) is entitled to come into Court and ask to be allowed to redeem, provided sixty years have not elapsed since the last recognition by the mortgagee of the plaintiff's title to the mortgaged property. RUNJEET NARAIN SINGH *v.* SHUREEFOONISSA [10 W. R., 478

97. ———— *Suit for redemption of mortgage—Acknowledgment.*—A mortgage deed having been executed in 1761 and an acknowledgment of the mortgagor's right to redeem having been made in writing in 838,—*Held* that a suit to redeem in 1878 was barred. The words "in the meantime" in cl. 15 of s 1 of the Limitation Act (XIV of 1859) mean within sixty years from the date of the mortgage. *Vassudavan Nambudri v Mussa Kutti, 6 Mad, 138,* followed. *Dasachand v. Sarfraz Ali, I L. R, 1 All., 425,* dissented from. MUKKANNI *v.* MANNAN I. L. R., 5 Mad., 182

KAMMANA KALLACHERI ILLATH VASSUDAVAN NAMBUDRI *v.* CHEMBRAKANDY MUSSA KUTTY [6 Mad., 138

MAHOMED ABDOOL RUZZAH *v.* ASIF ALI SHAH [3 N. W., 119

NARAIN LALL *v.* LALLA NUND KISHORE LALL [19 W. R., 78

mortgagor made by one only of two mortgagees would not avail to save the mortgagor's right of redemption being barred by limitation, where the mortgage was a joint mortgage and not capable of being redeemed piecemeal. *Bhogilal v. Amritlal, I. L. R, 17 Bom, 173,* referred to DHARMA *v.* BALMAKUND . . . I. L. R, 18 All, 458

99. ———— *Acknowledgments*

LIMITATION ACT, 1877—*continued.*

. ACKNOWLEDGMENT OF OTHER RIGHTS —*continued.*

MYLAPORE IYASAWMY VYAPOORY MOODLIAR *v.* YEO KAY . . . I. L. R., 14 Calc., 801 [L. R., 14 I. A., 168

100. ———— *Acknowledgment made*

... W. R., 3

101. ———— *Acknowledgment* ... title under ... eed not be ... atives, any acknowledgment in writing signed by the mortgagee is sufficient AHILOJI VALAD KHANDOJI *v.* DONGAR HARICHAND GUJAR 5 Bom., A. C., 176

UNICHA KHANDYIB KUNHI KUTTI NAIR *v.* VALIA PIDIOAIL KUNHAMED KUTTY MARACOAR [4 Mad., 359

ALI HOSSEIN *v.* RAMDYAL . . 3 N. W., 78

102. ———— *Suit to redeem mortgage—Acknowledgment*—The first plaintiff claimed to redeem a mortgage to defendants' ancestor for R320. Defendants pleaded that the mortgage was for

NARRAINA TANTRI *v.* UKKOMA . 6 Mad., 267

103. ———— *Entry in wajib-ul-urz—Acknowledgment.*—An entry in a wajib-ul-urz is

104. ———— *Acknowledgment*

purpose of the suit were within the scope of his

LIMITATION ACT, 1877—*continued.*

2. ACKNOWLEDGMENT OF OTHER RIGHTS —*continued.*

119. ———— *Application for execution of decree.*—The provisions of s. 19 of the Limitation Act, 1877, are not applicable to applications in execution of decrees The ruling of the Allahabad Full Bench in *Ramhit Rai* v. *Satgur Rai, I. L. R., 3 All., 247,* dissented from. RAMA v. VENKATESA . . I. L R., 5 Mad., 171

120 ———— *Application for execution of decree—Acknowledgment*—An application

art. 179, sch. II of the Limitation Act. *Ramhit Rai* v. *Satgur Rai, I. L. R, 3 All., 247,* and *Ram Coomar Kur* v *Jakur Ali, I. L. R., 8 Calc., 716,* followed TOBEE MAHOMED v. MAHOMED MAHBOOB [I. L. R, 9 Calc., 730: 13 C. L R., 91

121. ———— *Execution of decree—Acknowledgment in writing—Part-payment—Act XV of 1877, s. 20, and sch. II, No. 179.*—A decree

mencing from a certain date, and that, in case of default, the decree-holder might realize the whole amount of the decree. The instalments were not paid at the fixed dates, but part-payments of the amount of the decree were made by the judgment-

made and endorsed on the decree by the judgment-debtor fell within the terms of s. 20 of the Limitation Act, 1877. *Asmulullah Dalal* v. *Kally Churn Mitter, I. L. R., 7 Calc., 56,* distinguished. Also *per* MAHMOOD, J.—That it was doubtful whether in this case the decree-holder was bound to execute the whole decree when the first default occurred, as the terms of the decree appeared to give the decree-holder an option in the matter, and therefore whether the application for execution was barred because it was made more than three years after that date. *Shib Dat* v. *Kalka Prasad, I. L. R., 2 All., 443,* distinguished. JANKI PRASAD v. GHULAM ALI [I. L. R., 5 All., 201

122. ———— and art. 179—*Acknowledgment in writing—Authority to sign acknowledgment.*

tion was made. *Held* that it was not barred under art. 179, sch. II of Act XV of 1877, inasmuch as the petition constituted an acknowledgment of liability under s. 19 of the same Act, and a new period of limitation began to run from the 7th of December 1877. The object of the words "application in respect of any property or right" in s. 19 is

123. ———— *Execution of decree—*

LIMITATION ACT, 1877—*continued.*

2. ACKNOWLEDGMENT OF OTHER RIGHTS —*concluded.*

the amount entered in the bond advertised for sale, an application for execution would be duly filed. On this the order was that the execution case be struck off the file, and the attachment maintained. On the 24th December 1883, the decree-holder applied for execution of the decree, alleging that the judgment-debtor had failed to make over the bond to him accord-

the deed of the 11th January 1881 came within the terms of s 19 of the Limitation Act so as to originate a fresh period of limitation in respect of the execution of the decree. *Ghansham* v. *Mukha, I. L. R, 3 All., 320; Janki Prasad* v. *Ghulam Ali, I L. R, 5 All., 201*, and *Ramhit Rai* v. *Satgur Rai, I L. R., 3 All., 247*, followed. FATEH MOHAMMAD v. GOPAL DAS . . . I. L. R., 7 All., 424

124. ———— *Decree partly in favour of plaintiff and partly in favour of defendant—Effect of application for execution by one party as to preventing limitation running against the other*—

acknowledgment so as to prevent limitation. JEDDI SUBBAYA VENKATESH SHANBHOY v. RAMRAO RAM CHANDRA MURDESHVAR I. L. R., 22 Bom., 998

———— s. 20 (1871, s. 21)

1. ———— *Case under Punjab Code before Limitation Act, 1859.*—In a case under the Punjab Code before the Limitation Act of 1859 came into operation in Oudh it was held by the Privy Council

LIMITATION ACT, 1877—*continued.*

was renewed. MUKKUM LALL v. IMTIAZ-OOD-DOWLAH

[5 W. R., P. C., 18: 1 Ind. Jur., N. S., 142
10 Moore's I. A., 362

See GOWRA BEBEE v. KISSEN MISSER
[1 Ind. Jur., N. S., 224

and POTITPABUN SEN v. CHUNDER CAUNT MOOKERJEE . . . 1 Ind. Jur., N. S., 329

Under the Act of 1859, part-payment was not an admission of a debt, though evidenced by writing. MUHAMAD JANULA v. VENKATANAYAR 2 Mad., 79

ICVARA DAS v. RICHARDSON 2 Mad., 84

KRISTNA ROW v. HACHAPA SUGAPA
[2 Mad., 307

MADHO SINGH v THAKOOR PERSHAD
[5 N. W., 35

2. ———— *Prescribed period*—Two of the sons out of a joint Mitakshara family, consisting of a father and three sons and the widow and sons of a deceased son, and carrying on business in partnership, sued to recover money due on a hath-chitta, dated 11th December 1876, the last payment made and entered by the defendant being on the 20th July 1877, no time was fixed for payment of the money, so that it became payable on the date of the hath-chitta. The suit was instituted on the 19th July 1880 and

IN THE MATTER OF MONGOLA KOIBORTO v. ANNODA RAM . . . 12 C. L. R., 277

See LUVAR CHUNILAL ICHHARAM v LUVAR TRIBHOVAN LALDAS . . I. L. R., 5 Bom., 688

3. ———— *Part-payment of principal*

of principal or interest, as the case may be, so as to extend the period of limitation under s. 20 of the *Limitation Act (XV of 1877)*. RAGHO SHITARAM v HARI . . . I. L. R., 24 Bom., 619

4. ———— *Payment of interest*—S. 21 of Act IX of 1871 has no application where the payments of interest admitted were made after the

LIMITATION ACT, 1877—*continued.*

expiration of the period prescribed for the repayment of the loan. TARINEY CHURN NUNDY *v.* ABDUR ROHOMAN . . . . 2 C. L. R., 346

5. ———— *Payment of interest—Payment made before Act came into operation.*—The exception of payment of interest contained in s. 21, Act IX of 1871, is not confined to payments made after that Act came into force, but applies also to payments made before that date. TEAGÁRAYA MUDALI *v.* MARIYAPPA PILLAI [I. L. R., 1 Mad., 264

6. ———— *Bond—Payment of interest—Adjustment of accounts.*—Suit to recover the principal sum and one year's interest due on a bond, dated the 11th March 1866. By the terms of the bond the rent of certain land was assigned to the lender as security for interest. No date was specified in the bond for the payment of the principal sum. The interest was regularly paid up to October 1871, and the present suit was brought in June 1874. *Held*, on special appeal, by HOLLOWAY, *J.*, that assuming that the period of limitation was three years, and that it had run out both before action brought and before Act IX of 1871 came into operation, s 21 of that Act operated to save the action; that at the period of that law coming into force there was still a contractual right existing, and

That the lender having been constituted by the bond a trustee and receiver of the rents and profits of land, it was only on an adjustment of his accounts that the principal became payable. VALIA TAMBURATTI *v.* VIRA RAYAN . . I. L. R., 1 Mad., 228

7. ———— *Payment of interest—Con-*

ments was to be appropriated in satisfaction of the interest due on his debt *Held* that there had been no payment of interest, "as such," by the defendant so as to bring the case within cl 1 of s. 21 of the Limitation Act (IX of 1871), and that the plaintiff's claim was barred HANMANTLAL MOTICHAND *v.* RAMBABAI . I. L. R., 3 Bom., 198

8. ———— *Receipt of rent—Payment of interest—Mortgage.*—In 1858 land was mortgaged to the plaintiff with possession for a term of five years, and in 1861 the defendant, the mortgagor, took a lease of the land from the plaintiff, under which he paid rent until 1870 71. The mortgage-debt was repayable on the expiry of the term. Plaintiff brought the suit out of which this appeal arose to recover the debt from the mortgagor. It was pleaded that the suit was barred by limitation, to which plaintiff replied that the receipt of rent was in fact a payment of interest, and that from the last payment of interest a new period of limitation arose. *Held* that the case being governed by the provisions of Act IX of 1871, the payment of rent under an

9. ———— *Payment of interest—Prescribed period—Extension of period.*—The words "prescribed period," used in s. 20 of the Limitation Act, 1877, mean the period prescribed by the Act. The contention that only one extension of the period of limitation is given by payment of interest is unfounded. VENKATARATNAM *v.* KAMAYYA [I. L. R., 11 Mad., 218

10. ———— *Payment of interest—Entry on account of interest in debtors' books in presence of plaintiff.*—The plaintiffs, who were

to be returned with interest on demand. It appeared that small sums were paid by *K* to the plaintiffs from time to time, and entries of interest were made in the defendants' books as being credited to the plaintiffs The defendants contended that the suit was barred. For the plaintiffs it was contended that the entry of interest in the defendants' book

limitation. Nothing took place which could be regarded as equivalent to payment of interest. ICHHA DHANJI *v.* NATHA . I. L. R., 13 Bom., 338

11. ———— *Payment of interest as such—Mortgage—Payment of rents to mortgagee in lieu of interest on debt—Deed of assignment showing payment of rent in lieu of interest—*

In February 1890, *B* filed this suit to recover the principal sum from *A* personally, relinquishing his claim against the land, as the bond was not registered. *A* pleaded limitation. *B* contended

LIMITATION ACT, 1877—*continued.*

Naik v. Shidramapa Balapa Desai

[I. L. R., 19 Bom., 663

12. ——— *Payment of interest on a debt—Authority of a previous guardian of a debtor remaining in management after the debtor's majority—Hindu law—Guardian.*—The mother and guardian of an infant borrowed money for his expenses and executed a bond in 1886 to secure the repayment. In a suit by the obligee in 1892, it appeared that the mother had remained in management of her son's

by lapse of time. *Sobhanadri Appa Rau v. Sriramulu, I. L. R., 17 Mad., 221,* referred to. Kailasa Padiachi v. Ponnukannu Achi

[I. L. R., 18 Mad., 456

13. ——— *Payment of interest as such—Credit of interest made in accounts of defendants.*—In a suit brought by a creditor against certain persons to whom she had lent money on interest,—*Held* that, in order to save the bar of limitation, a mere credit of interest entered in the

14. ——— *Acknowledgment of liability—Interest paid on debt—Contribution—Joint debtors.*—By a payment into Court under an order on account of decrees for rent and revenue in arrear, due to the landlord zamindar from the joint owners of an under-tenure, their estate was saved

three years from the date of that acknowledgment were running and at a date less than three years before this suit, interest on part of the money borrowed had been paid by the manager whom the appellant, jointly with the other co-owners of the estate,

LIMITATION ACT, 1877—*continued.*

had authorized as her agent to pay it. *Held*

L. R., 25 I. A., 95
2 C. W. N., 402

15. ——— *Payment of interest as such—Settlement of accounts.*—To satisfy the requirements of s. 20 of the Limitation Act (XV of 1877), the payment of principal or interest as such need not be in money. It may be in goods or by a settlement of accounts between the parties, but the payment must be of such a nature that it would be a complete answer to a suit brought by the creditor to recover the amount. Where a debtor consents that money due by him for interest should be credited to the account of the principal, and the interest balance reduced by that amount, such a consent is really tantamount to a payment of interest; it is as if the debtor makes the payment and the creditor advances it again. When both parties agree to such a settlement, and the accounts are so adjusted, the adjustment operates as a payment of interest under s. 20 of the Limitation Act (XV of 1877). Plaintiffs used to lend moneys to the defendants' firm. The accounts of the dealings between the parties were settled from time to time. On the occasion of each settlement, the interest was calculated up to the date of the settlement, and the amount found due was credited to the interest account, and debited to the account of the principal in the creditors' books, and the amount so debited was thenceforward treated as principal for calculation of future interest. Corresponding entries were made in the debtors' books

16. ——— *Suit for money—Payment on account of principal within the period of limitation—Evidence of such payment by writing*

of part-payments from time to time in an account

which was less than six years (the period of limitation for the suit) before the date of institution of the suit, but it was not entered in the defendant's accounts until after the date when the claim would otherwise have been barred by limitation. *Held* that the provisions of the Limitation Act, s. 20, were satisfied and that the suit was not barred by limitation. Venkatasubbu v. Appusundram

[I. L. R., 17 Mad., 92

LIMITATION ACT, 1877—*continued.*

as such" within three years of the filing of the suit by the duly authorized agents of the defendants, and the claim was therefore barred. VENKAJI BABAJI NAIK *v.* SHIDRAMAPA BALAPA DESAI

[I. L. R., 19 Bom., 663

12. ———— *Payment of interest on a debt—Authority of a previous guardian of a debtor remaining in management after the debtor's majority—Hindu law—Guardian.*—The mother and guardian of an infant borrowed money for his expenses and executed a bond in 1886 to secure the repayment. In a suit by the obligee in 1892, it appeared that the mother had remained in management of her son's affairs, and had paid interest on the debt after he had attained majority and less than three years before the institution of the suit. *Held* that the mother and guardian was a "person authorized to pay" interest on behalf of the debtor within the meaning of s 20 of the Limitation Act, and that the suit was not barred by lapse of time *Sobhanadri Appa Rau v. Sriramulu, I. L R, 17 Mad, 221,* referred to. KAILASA PADIACHI *v.* PONNUKANNU ACHI

[I. L. R., 18 Mad., 456

13. ———— *Payment of interest as such—Credit of interest made in accounts of defendants*—In a suit brought by a creditor against certain persons to whom she had lent money on interest,—*Held* that, in order to save the bar of limitation, a mere credit of interest entered in the accounts of the defendants was not a sufficient payment of "interest as such" under s. 20, Limitation Act, to save the bar. KOLLIPARA PULLAMMA *v* MADDULA TATAYYA . I. L. R., 19 Mad., 340

14. ———— *Acknowledgment of liability—Interest paid on debt—Contribution—Joint debtors.*—By a payment into Court under an order on account of decrees for rent and revenue in arrear, due to the landlord zamindar from the joint owners of an under-tenure, their estate was saved

three years from the date of that acknowledgment were running and at a date less than three years before this suit, interest on part of the money borrowed had been paid by the manager whom the appellant, jointly with the other co-owners of the estate, had authorized as her agent to pay it. *Held*

MONI CHOWDHRANI *v.* ISHAN CHUNDER ROY

[I. L. R. 25 Calc., 844
L R., 25 I. A., 95
2 C. W. N., 402

15. ———— *Payment of interest as such—Settlement of accounts.*—To satisfy the requirements of s. 20 of the Limitation Act (XV of 1877), the payment of principal or interest as such need not be in money It may be in goods or by a settlement of accounts between the parties, but the payment must be of such a nature that it would be a complete answer to a suit brought by the creditor to recover the amount Where a debtor consents that money due by him for interest should be credited to the account of the principal, and the interest balance reduced by that amount, such a consent is really tantamount to a payment of interest, it is as if the debtor makes the payment and the creditor advances it again. When both parties agree to such a settlement, and the accounts are so adjusted, the adjustment operates as a payment of interest under s 20 of the Limitation Act (XV of 1877) Plaintiffs used to lend moneys to the defendants' firm. The accounts of the dealings between the parties were settled from time to time On the occasion of each settlement, the interest was calculated up to the date of the settlement, and the amount found due was credited to the interest account and debited to the account of the principal in the creditors' books, and the amount so debited was thenceforward treated as principal for calculation of future interest Corresponding entries were made in the debtors' books. *Held* that such a settlement of accounts constituted a payment of interest as such within the meaning of s 20 of the Limitation Act (XV of 1877) KABIYAPPA *v.* RACHAPA . I. L R, 24 Bom., 493

16. ———— *Suit for money—Payment on account of principal within the period of limitation—Evidence of such payment by writing made after period expired.*—The obligee of a registered mortgage bond, dated the 30th January 1875, sued in February 1891 to recover from the obligor the principal and interest remaining due thereunder. In bar of limitation the plaintiff relied on entries of part-payments from time to time in an account written by the defendant These part-payments were made at such times as to keep alive the obligee's right of suit up to the date of the last of them. The last of these payments was made on a date which was less than six years (the period of limitation for the suit) before the date of institution of the suit, but it was not entered in the defendant's accounts until after the date when the claim would otherwise have been barred by limitation. *Held* that the provisions of the Limitation Act, s. 20, were satisfied, and that the suit was not barred by limitation. VENKATASUBBU *v.* APPUSUNDRAM

[I. L. R., 17 Mad., 92

LIMITATION ACT, 1877—*continued.*

expiration of the period prescribed for the repayment of the loan. TARINEY CHURN NUNDY *v.* ABDUR ROHOMAN . . . . 2 C. L. R., 346

5. ———— *Payment of interest—Payment made before Act came into operation.*—The exception of payment of interest contained in s. 21, Act IX of 1871, is not confined to payments made after that Act came into force, but applies also to payments made before that date. TEAGĀRAYA MUDALI *v.* MARIYAPPA PILLAI

[I. L. R., 1 Mad., 264

6. ———— *Bond—Payment of interest—Adjustment of accounts.*—Suit to recover the principal sum and one year's interest due on a bond, dated the 11th March 1866. By the terms of the bond the rent of certain land was assigned to the lender as security for interest. No date was specified in the bond for the payment of the principal sum. The interest was regularly paid up to October 1871, and the present suit was brought in June 1874. *Held*, on special appeal, by HOLLOWAY, *J.*, that assuming that the period of limitation was three years, and that it had run out both before action brought and before Act IX of 1871 came into operation, s. 21 of that Act operated to save the action, that at the period of that law coming into force there was still a contractual right existing, and that the right of action was restored by the payment of interest *Vencatachella Mudali* v. *Sheshagherri Rau*, 7 *Mad.*, 283, and *Mokatalla Naganna* v. *Pedda Narappa*, 7 *Mad.*, 298, distinguished. *Held* by MORGAN, *C J*, that no question of limitation arose. That the lender having been constituted by the bond a trustee and receiver of the rents and profits of land, it was only on an adjustment of his accounts that the principal became payable. VALIA TAMBURATTI *v.* VIRA RAYAN . . I. L. R., 1 Mad., 228

7. ———— *Payment of interest—Contract in writing*—The defendant at different times made payments to the plaintiff, who was his creditor,

no payment of interest, "as such," by the defendant so as to bring the case within cl 1 of s. 21 of the Limitation Act (IX of 1871), and that the plaintiff's claim was barred HANMANTLAL MOTICHAND *v* RAMBABAI . I. L. R., 3 Bom., 198

8. ———— *Receipt of rent—Payment of interest—Mortgage.*—In 1858 land was mortgaged to the plaintiff with possession for a term of five years, and in 1861 the defendant, the mortgagor, took a lease of the land from the plaintiff, under which he paid rent until 1870 71. The mortgage-debt was repayable on the expiry of the term Plaintiff brought the suit out of which this appeal arose to recover the debt from the mortgagor It was pleaded that the suit was barred by limitation, to which plaintiff replied that the receipt of rent was in fact a payment of interest, and that from the last payment of interest a new period of limitation arose. *Held* that the case being governed by the provisions of Act IX of 1871, the payment of rent under an agreement entirely independent of the original mortgage could not be regarded as a payment of interest. UMMER KUTTI *v.* ABDUL KADAR

[I. L. R., 2 Mad., 165

9. ———— *Payment of interest—Prescribed period—Extension of period.*—The words "prescribed period," used in s. 20 of the Limitation Act, 1877, mean the period prescribed by the Act. The contention that only one extension of the period of limitation is given by payment of interest is unfounded. VENKATARATNAM *v* KAMAYYA

[I. L. R., 11 Mad., 218

10. ———— *Payment of interest—Entry on account of interest in debtors' books in presence of plaintiff.*—The plaintiffs, who were members of the Dalvadi community, sued in 1883 to recover from the defendant the sum of R2,611-3-6 as found credited to their account in 1880 by the defendants' father, with whom the community had lodged a sum of R2,320 in 1874. They alleged that the sum was lodged on the condition that it was to be returned with interest on demand. It appeared that small sums were paid by *K* to the plaintiffs from time to time, and entries of interest were made in the defendants' books as being credited to the plaintiffs. The defendants contended that the suit was barred. For the plaintiffs it was contended that the entry of interest in the defendants' book was made in the plaintiffs' presence and amounted to a payment of interest within the meaning of s. 20 of the Limitation Act (XV of 1877). *Held* that such an entry did not amount to payment of interest within the meaning of the section so as to save limitation. Nothing took place which could be regarded as equivalent to payment of interest. ICHHA DHANJI *v.* NATHA . I. L. R., 13 Bom., 338

11. ———— *Payment of interest as such—Mortgage—Payment of rents to mortgagee in lieu of interest on debt—Deed of assignment showing payment of rent in lieu of interest—Admissibility of deed in evidence—Registration Act (III of 1877), ss. 3 and 17.*—By a bond, dated the 15th July 1872, *A* assigned to *B* the "vahivat of assessment" of certain lands belonging to him as security for a loan of R10 000. The bond provided that *B* should receive the assessment, and, after

registered. *A* pleaded limitation. *B* contended

LIMITATION ACT, 1877—*continued.*

and 3 of the Registration Act (III of 1877) or else a mortgage; and in either case the bond could not be admitted in evidence, as it was not registered. But it was only by reading the terms of the bond that the Court could gather that the assessment was to be received in lieu of interest. This would be to admit indirectly the provisions of the bond in evidence. Apart from the bond, there was no

NAIK *v.* SHIDRAMAPA BALAPA DESAI

[I. L. R., 19 Bom., 663

12. ———— *Payment of interest on a debt—Authority of a previous guardian of a debtor remaining in management after the debtor's majority—Hindu law—Guardian.*—The mother and guardian of an infant borrowed money for his expenses and executed a bond in 1886 to secure the repayment. In a suit by the obligee in 1892, it appeared that the mother had remained in management of her son's affairs, and had paid interest on the debt after he had attained majority and less than three years before the institution of the suit. *Held* that the mother and guardian was a "person authorized to pay" interest on behalf of the debtor within the meaning of s 20 of the Limitation Act, and that the suit was not barred by lapse of time. *Sobhanadri Appa Rau* v. *Sriramulu, I L. R, 17 Mad, 221,* referred to KAILASA PADIACHI *v.* PONNUKANNU ACHI

[I. L. R., 18 Mad., 456

13. ———— *Payment of interest as such—Credit of interest made in accounts of defendants.*—In a suit brought by a creditor against certain persons to whom she had lent money on interest,—*Held* that, in order to save the bar of limitation, a mere credit of interest entered in the accounts of the defendants was not a sufficient payment of "interest as such" under s 20, Limitation Act, to save the bar KOLLIPARA PULLAMMA *v* MADDULA TATAYYA . I. L. R., 19 Mad., 340

14. ———— *Acknowledgment of liability—Interest paid on debt—Contribution—Joint debtors.*—By a payment into Court under an order on account of decrees for rent and revenue in arrear, due to the landlord zamindar from the joint owners of an under-tenure, their estate was saved from sale. In respect of a proportionate share of liability for money raised for this purpose one of the

interest to creditors from whom had been borrowed the money for the payment into Court. Whilst the three years from the date of that acknowledgment were running and at a date less than three years before this suit, interest on part of the money borrowed had been paid by the manager whom the appellant, jointly with the other co-owners of the estate, had authorized as her agent to pay it. *Held*

MONI CHOWDHRANI *v.* ISHAN CHUNDER ROY

[I. L. R. 25 Calc, 844
L. R., 25 I. A., 95
2 C. W. N., 402

15. ———— *Payment of interest as such—Settlement of accounts.*—To satisfy the requirements of s 20 of the Limitation Act (XV of 1877), the payment of principal or interest as such need not be in money. It may be in goods or by a settlement of accounts between the parties, but the payment must be of such a nature that it would be a complete answer to a suit brought by the creditor to recover the amount. Where a debtor consents that money due by him for interest should be credited to the account of the principal, and the interest balance reduced by that amount, such a consent is really tantamount to a payment of interest; it is as if the debtor makes the payment and the creditor advances it again. When both parties agree to such a settlement, and the accounts are so adjusted, the adjustment operates as a payment of interest under s. 20 of the Limitation Act (XV of 1877). Plaintiffs used to lend moneys to the defendants' firm. The accounts of the dealings between the parties were settled from time to time. On the occasion of each settlement, the interest was calculated up to the date of the settlement, and the amount found due was credited to the interest account, and debited to the account of the principal in the creditors' books, and the amount so debited was thenceforward treated as principal for calculation of future interest. Corresponding entries were made in the debtors' books. *Held* that such a settlement of accounts constituted a payment of interest as such within the meaning of s 20 of the Limitation Act (XV of 1877). KARIYAPPA *v* RACHAPA . I. L. R, 24 Bom., 493

16. ———— *Suit for money—Payment on account of principal within the period of limitation—Evidence of such payment by writing made after period expired.*—The obligee of a registered mortgage bond, dated the 30th January 1875, sued in February 1891 to recover from the obligor the principal and interest remaining due thereunder. In bar of limitation the plaintiff relied on entries of part-payments from time to time in an account

which was less than six years (the period of limitation for the suit) before the date of institution of the suit, but it was not entered in the defendant's accounts until after the date when the claim would otherwise have been barred by limitation. *Held* that the provisions of the Limitation Act, s. 20, were satisfied, and that the suit was not barred by limitation. VENKATASUBBU *v.* APPUSUNDRAM

[I. L. R., 17 Mad., 92

LIMITATION ACT, 1877—*continued.*

17. ——— *Mortgage—Suit for arrears of rent.*—Where a kanom was granted in 1858 for five years to secure repayment of a loan, and a lease made in 1-6. to the grantor of the kanom by the kanom-holder and rent paid under the lease until 1871,—*Held* that a suit brought in 1877 to recover the kanom amount and arrears of rent for seven years was barred by limitation except as to three years' arrears of rent. PALLIAGATHA UMMER KUTTI *v.* ABDUL KADAR I. L. R., 3 Mad., 57

18. ——— *Entry of account stated by debtor in creditor's books—Implied contract*—An entry of an account stated, made by a debtor in his creditor's books, is not a contract in writing within the meaning of Act IX of 1871, s. 21. AMRITLAL MANSUK *v.* MANIKLAL JETHA [10 Bom., 375

This case was followed in HANMANTMAL MOTICHAND *v.* RAMBABAI . I. L. R., 3 Bom., 198

where it was held that, consequently, the payments made by the defendant on account were not such payments of the principal of the debt due by him as would bar the operation of the Act.

See RAMCHODDAS NATHUBHAI *v.* JEYCHAND KHUSAL CHAND . I. L. R., 8 Bom., 405

19. ——— *Payments towards adjusted account.*—Where, subsequently to the adjustment of his account with the plaintiffs, the defendant had been credited with amounts of surplus proceeds of goods and of a hundi, held that such amounts were not payments within the meaning of s. 20 of the Limitation Act NARRONJI BHIMJI *v.* MUGNIRUM CHANDAJI . . I. L. R., 6 Bom., 103

20. ——— *Sum realized by execution sale—Part-payment*—A sum realized by an execu-

under

riod of

MONEE

. R., 20

BEMUL DOSS *v.* IKBAL NARAIN . 25 W. R., 249

RAMCHANDRA GANESH *v.* DEVBA [I. L. R., 6 Bom., 626

21. ——— *Part-payment of principal of bond—Endorsement, Facts which must appear in*—To satisfy the conditions of s 20 of the Limitation Act, the endorsement in the handwriting of the person making a part-payment of the principal of a bond need not show the appropriation of the payment to principal, but only the fact of the payment. JADA ANKAMMA *v.* NADIMPALLE RAMA [I. L. R., 6 Mad., 281

22. ——— *Part-payment of principal—Endorsement—Handwriting of payer—Marksman.*—In s 20 of the Limitation Act, 1877, the condition that the fact of payment in the case of part-payment of the principal of a debt must appear in the handwriting of the person making the same, is satisfied if the payer signs or affixes his mark beneath an endorsement not written by him. MADABHUSHI SESHACHARLU *v.* SINGARA SESHAYA [I. L. R., 7 Mad., 55

LIMITATION ACT, 1877—*continued.*

23. ——— *Part-payment of principal—Endorsement—Handwriting of payer—Marksman.*—The mark of the payer subscribed to

shall appear in the handwriting of the person making the payment, in order that a new period of limitation may run from the date of such payment. ELLAPA NAYAK *v.* ANUMATI GOUNDAN [I. L. R., 7 Mad., 76

25. ——— *Part-payment of principal of debt—"Person making the same"—Mode of creating new period of limitation by part-payment.*—In order to create a new period of limitation under the proviso to s. 20 of the Limitation Act (XV of 1877), the fact of part-payment of the principal of a debt must appear in the handwriting of the person making the part-payment, and not in that of any other person, however authorized. *Bhugabuth Thakur* v. *Madhub Kristo Sett, I. L. R., 23 Calc., 553 note,* overruled. MUKHI HAJI RAHMUTULLA *v.* COVERJI BHUJA . I. L. R., 23 Calc., 546

Contra, BHUGABUTH THAKUR *v.* MADHUB KRISTO SETT . . . I. L. R., 23 Calc., 553 note

26. ——— *Part-payment of principal of debt.*—An insolvent in debt to a Bank had given a promissory note for the full amount of the debt due. He also gave, by way of collateral security for the

the date of the loan, the insolvent had addressed a

[I. L. R., 23 Calc., 592

27. ——— *Part-payment of debt—Endorsement of hundi by debtor.*—Where the only evidence in the handwriting of the debtor of the part-payment of the principal of a debt was the

Held that

LIMITATION ACT, 1877—*continued.*

I. L. R., 9 Mad., 271, referred to RAM CHANDAR v. CHANDI PRASAD . . I. L. R., 19 All., 307

28. —— —— *Unregistered mortgage—Receipt of produce in lieu of interest.*—Receipt of the produce of land held under a deed of mortgage

29. —————— *Agent, Authority of, to make payment.*—An agent may be impliedly authorized within the meaning of s. 20 of the Limitation Act to make a payment of interest or principal before the expiration of the period prescribed. BIRJMOHUN LALL v. RUDRA PERKASH MISSER

[I. L. R., 17 Calc., 944

30. —— —— *Usufructuary mortgage—Right of redemption*—The last clause of s. 20 of

———— s. 21 (1871, s. 20, expl. 2; 1859, s. 4).

1. ———— *Acknowledgment by partner.*—An acknowledgment by one partner sufficient to save limitation will not bind another partner who has not subscribed such acknowledgment. BENARSEE DASS v. KHOOSHAL CHUND. KHOOSHAL CHUND v. PALMER . . . . 2 Agra, Pt. II, 170

2. —— —— *Partnership accounts.*—S. 20, Act IX of 1871, does not apply to, partnership accounts KHOODEE RAM DUTT v. KISHEN CHAND GOLEECHA . . . 25 W. R., 145

3. —— —— *Acknowledgment given by one partner when binding on the firm—Partnership—Practice—Parties—Same person both plaintiff and defendant.*—The plaintiff, as heir of his mother,

along with the other partners. The alleged loans were made on the 2nd November 1881 and the 12th October 1882 The present suit was not filed until December 1885. The plaintiff, however, relied on an

authority to make such an acknowledgment on behalf of the firm might have been presumed; but in this case the business had been closed, and the partnership entirely dissolved. The presumption, therefore, which arises in active partnership, no longer existed, and there was no evidence that the plaintiff had been expressly authorized to act for the other partners in making the acknowledgment The meaning of the word "only" in s. 21 of the Limitation Act (XV of

4 ———— *Acknowledgment signed by one of several partners*—The word "only" in s. 21 of the Limitation Act (XV of 1877) is not to be treated as a surplusage It means that the mere writing or signing of an acknowledgment by one partner does not necessarily of itself bind his co-partner, unless it can be shown that he had otherwise power to bind that partner for the purpose of making such acknowledgment and in effect purported so to bind him. GADU BIBI v. PARSOTAM

[I. L. R., 10 All., 418

———— s. 22 (1871, s. 22)

See FALSE IMPRISONMENT.

[I. L. R., 9 Bom., 1

See PARTIES—ADDING PARTIES TO SUITS—PLAINTIFFS I. L. R., 14 All., 524

[I. L. R., 17 Bom., 29, 413

See PARTIES—ADDING PARTIES TO SUITS—RESPONDENTS I. L. R., 13 All., 78

[I. L. R., 14 All., 154

See PLAINT—AMENDMENT OF PLAINT

[I. L. R., 16 Mad., 319

1. ———— *Party added under s. 73, Civil Procedure Code, 1859*—When a party was substituted or added as a defendant, under s. 73 of Act VIII of 1859, the suit was held to be commenced against him at the time, and not before, therefore, where *A* sued *B* as representative of *C* for land, and more than twelve years after the cause of action accrued found that *B* was not in possession, but *D*, and by order of Court *D* was substituted as defendant,—*Held* the claim against *D* was barred RAJ KISHOREE DOSSEE v. BUDDEN CHUNDER SHAW

[2 Ind. Jur., N. S., 49. 6 W. R., 238

NUNDO GOPAL ROY v. JANKEERAM CHUCKERBUTTY . . W. R., 1864, 316

ESHAN CHUNDER BANERJEE v. KRISTO GUTTY NAG . . . 14 W. R., 377

2. ———— *Act XIV of 1859—Parties added after expiration of period of limitation.*—A suit was held not to be barred by the Limitation Act, 1859, as against parties added after the expiration of the period allowed by law, provided the plaint be filed against the original parties prior to the expiration of such period. ISSEREEPERSAUD v. URJOONLOLL . . . 2 Hyde, 248

LIMITATION ACT, 1877—*continued.*

KALEE KISHORE CHATTERJEE *v.* LUCKHEE DEBIA CHOWDHRANI . . . 6 W. R., 172

3. ——————— *Act XIV of 1859—Suit by widow on behalf of minor son—Son afterwards joined as plaintiff.*—In 1864, a Hindu widow having a minor son sued, in her own name and on her own behalf, to recover certain immoveable property. The action was brought on a lease which expired in 1854 The defendant denied the lease, and contended that the suit should be dismissed, as it could not be maintained by the widow in her own name In 1871, the son, who had in the meantime attained his majority in 1865, was made a co-plaintiff on his own application. *Held* that the suit was barred, inasmuch as it must, if maintainable, be deemed to have been instituted in 1871, when the son was made a co-plaintiff, the plaint previously to that time having been in the widow's own name and expressly on her own behalf. *Held* also that making the son a co-plaintiff in 1871 could not change the character of the suit as it had existed previous to that date, so as to defeat the law of limitation *Held* (by PINHEY, *J.*) that the minor was wrongly made a plaintiff in 1871. *Dhurm Dass Pandey* v *Sham Soondri Dabiah, 6 W. R., P. C., 44,* distinguished. GOPAL KASHI *v.* RAMA BAI SAHEB PATVAR . . . . 12 Bom., 17

4. ——————— *Act IX of 1871, s. 1 and s. 22—"Commenced," "Instituted"—Added defendants—Suit for contribution or partnership account—Cause of action —Quære*—Whether the word " commenced " in s. 22 of Act IX of 1871 is equivalent to the word "instituted" in s 1, and whether s 1 does not exclude from the operation of the Act all suits instituted before 1st April 1873, even as to defendants added after that date. Sup-

apply, then under a general principle of law, be allowed to reckon the period of limitation on which they rely from the date at which they were added, but the periods of limitation provided by Act IX of

of the partnership, from the Commercial, Finance, and Stock Exchange Corporation, two sums of R1,21,614 and R1,08,000 for which they gave their joint and several promissory notes, and shortly afterwards two of the partners retired, leaving the plaintiff and the four defendants alone constituting the firm On 27th September 1865, the plaintiff and first defendant were sentenced to transportation for life, and on 16th April 1867 one of the other defendants became insolvent. On 25th April 1867, the liquidators of the Commercial, Finance, and Stock Exchange Corporation obtained a decree against the plaintiff and the three defendants who had joined in the making of the promissory notes for the amount due on their joint and several promissory

LIMITATION ACT, 1877—*continued.*

tiff and first defendant, after satisfying thereout two prior decrees against them, were applied in part satisfaction of the decree of 25th April 1867, and the moneys so recovered were distributed to the shareholders by the liquidators, who, however, retained in their hands such portion as would have been payable in respect of the shares held by the judgment-debtors, and thus the whole decree was satisfied, leaving a balance of R25 212. The distribution of assets was made on 3rd April 1869, and the final dividend to shareholders other than the judgment-debtors paid on 3rd August 1869. The two

18th March 1873 as contributory for the satisfaction of the joint decree, but subsequently, by amendment made on the 6th February 1874, added the other defendants, and prayed for a decree that he was

tion as to all the defendants was that provided by Act XIV of 1859, whether the suit was to be treated as one for a partnership account, or one for contribu-

KHATAV LADHA . . . 12 Bom., 97

5. ——————— *Substitution of heirs of*

LIMITATION ACT, 1877—*continued.*

6. ——————— and art. 60—*Adding party as defendant.*—On 2nd August 1872, *A K* filed a plaint against *M H* and *M R*, in which he alleged that on 1st April 1870 *M R* had given a hundi for R500, for value received, to [illegible]

[illegible] ingly prayed that the defendants *M H* and *M R* might be decreed to pay him R534 with profit and interest. *M H* denied that he had purchased the [illegible]

[illegible] purporting to be by *I H* indorsed on it. The trying Judge, after settlement of the issues, on 25th June 1874, added *I H* as a party defendant *I H* [illegible]

[illegible] law of limitation applicable to the suit, so far as *I H* was concerned, was sch. II, art. 60 of that Act, and that therefore, if the payment by *M R* to *I H* were not proved to have been made within three years before 25th June 1874, the day on which *I H* was added as a defendant, the suit as against him was barred *Dayal Jairaj v. Khatav Ladha, 12 Bom., 97,* and *Chinnasami Iyengar v. Gopalacharry, 7 Mad., 392,* dissented from ABDUL KARIM v. MANJI HANSRAJ I. L. R., 1 Bom., 295

But *see* ISSUREPERSAUD v. URJOON LALL [2 Hyde, 248

7. ——————— *Adding plaintiffs whose suit is barred.*—Where the original plaintiffs could only enforce their claim in conjunction with the added plaintiffs, and the added plaintiffs were barred by s. 22 of Act XV of 1877,—*Held* that the claim of the original plaintiffs was also barred *Boydonath Bag v. Grish Chunder Roy, I. L. R., 3 Calc., 26,* dissented from RAMSEBUK v. RAM LALL KOONDOO [I. L. R., 6 Calc., 815: 8 C. L. R., 457

8. ——————— *Parties—Civil Procedure Code, ss 27 and 32—Institution of suits—Change of parties.*—The change of parties as plaintiffs in conformity with the provisions of s. 27 of the Civil Procedure Code does not give rise to such a question of limitation as arises upon the addition of a new person as a defendant under s. 32 SUBODINI DEBI v. CUMAR GANODA KANT ROY BAHADUR [I. L. R., 14 Calc., 400

9. ——————— *Joint purchase—Suit against one of the purchasers—Addition of other purchaser as defendant—Effect of suit as regards the latter being barred by limitation.*—P, on the 12th April 1880, instituted a suit against *Z* claiming to enforce a right of pre-emption in respect of the sale of a share of an undivided estate to the latter and his minor brother *A* jointly, under an instrument, dated the 12th April 1879. On the 3rd May [illegible]

10. ——————— *Adding defendant after suit barred.*—A suit for property in the possession of several persons was brought by the plaintiff against one of those persons only. After the institution of the suit, and after the period of limitation prescribed for a separate suit on the same cause of action against the other persons in possession had elapsed, these latter were added as defendants. *Held* that the suit must be dismissed as against the added defendants on the ground that it was barred by limitation. OBHOY CHURN NUNDI v. KRITARTHAMOYI DOSSEE . I. L. R., 7 Calc., 284

11. ——————— *Suit for partnership accounts—Joint contract—Necessary parties, Omission of—Addition of new defendant—Time of joinder, how material.*—A suit was brought for partnership accounts. Upon the objection of the defendant it was found that a necessary party defendant had been omitted, and such party was afterwards added as a defendant at a time when the suit as against him was barred. *Held* that the whole suit was rightly dismissed RAMDOYAL v. JUNMENJOY COONDOO . I. L. R., 14 Calc., 791

12. ——————— *Parties defendants substituted as plaintiffs after suit by them is barred—Suit to set aside sale—Civil Procedure Code, s. 32.*—A mitta held by tenants-in-common was sold for arrears of revenue at a time when the owners of a moiety thereof were minors. In a suit brought by the mother of these minors on their behalf against the Collector to set aside the sale, the plaintiffs impleaded also the other previous owners, of whom one was the purchaser at the sale. Two others, in their written statement, pleaded that the purchase had been made in fraud of their rights, and claimed to be still entitled to their shares in the mitta on the ground that the purchaser must be held to have purchased for their benefit (Indian Trusts Act, II of 1882, s. 90). They further claimed that, should the sale be set aside so far as the plaintiffs' interests were concerned, the sale of their interests also should be held to be null and void. Before the suit came on for hearing, the District Judge *suo motu* ordered that [illegible]

[illegible] the order was illegal KRISHNA v. MEKAMPERUMA. COLLECTOR OF SALEM v. MEKAMPERUMA [I. L. R., 10 Mad., 44

LIMITATION ACT, 1877—*continued.*

13. ———— *Parties to suit—Transfer of defendants to category of plaintiff, Effect of—Land Registration Act (Beng. Act VII of 1876).*

was in possession. *A* instituted a suit against *C* to recover arrears of rent of the dar-patni for a period of three years, and joined *B* as a *pro formâ* defendant, alleging that he was away from home at the time of the institution of the suit, and could not therefore join as co-plaintiff. *A's* proprietary interest was registered under the provisions of Bengal Act VII of 1876, the Land Registration Act, but *B's* interest was not so registered. Prior to the suit coming on for hearing, but after the right to recover the rent for the first two out of the three years had become barred by limitation, assuming no suit to have been brought, *B* was transferred from the category of defendant in the suit into that of co-plaintiff. In answer to the suit, *C* pleaded limit-

institute a new suit on the date when he was so changed into co-plaintiff, and that the suit had been rightly dismissed on the ground of limitation so far as the rent of the first two years was concerned, but that the plaintiffs were entitled to a decree for the rent in respect of the third year which was not barred by limitation at the time *B* was made co-plaintiff. JIBANTI NATH KHAN *v.* GOKOOL CHUNDER CHOWDRY . I. L. R., 19 Calc., 760

14. ———— *Parties changed from defendants to plaintiffs.*—The plaintiff claiming to be entitled, together with two of the defendants, to the office of archaka of a temple, sued in 1889 for a declaration of his title, and for a declaration that an agreement entered into by them in 1886 with the other defendants was void as having been executed under coercion, and because part of the consideration was the withdrawal of a pending criminal charge of trespass and theft against them. These averments were proved. The first-named defendants were made plaintiffs in the suit more than three years after the execution of the agreement. *Held* that the first plaintiff was entitled to a declaration of the invalidity of the agreement, but not the others who had been joined as plaintiffs more than three years from its date. SRIRANGACHARIAR *v.* RAMASAMI AYYANGAR [I. L. R., 18 Mad., 189

LIMITATION ACT, 1877—*continued.*

15. ———— *Suit by heirs of deceased Mahomedan—Suit originally filed in time by one heir Another heir subsequently made co-plaintiff beyond time of limitation—Letters of administration obtained only by second plaintiff—Parties, Joinder of.*—The plaintiff, as widow and heir of a Khoja Mahomedan, sued on a promissory note, dated the 2 st October 1892, passed by the defendant to her deceased husband. The suit was

Subsequently the plaintiffs came to terms, and the widow withdrew her application for letters of administration, and her father-in-law applied for and obtained letters of administration instead. On the 14th November 1896, the suit came on for hearing. The first plaintiff did not produce any letters of administration or certificate under the Succession Certificate Act (VII of 1889) The second plaintiff produced the letters of administration obtained by him. *Held* that the suit was barred by s. 22 of the Limitation Act (XV of 1877). When the second plaintiff was added as a party, the suit

tiff was properly joined as a party plaintiff. When one or more heirs sue, there is no objection to joining all to make the representation complete. FATMABAI *v.* PIRBHAI VIRJI . I. L. R., 21 Bom., 580

16. ———— *Civil Procedure Code (Act XIV of 1882), s. 27—Suit by benami purchaser at sale in execution of decree—Addition of real purchaser as co-plaintiff.*—The plaintiff

his uncle. Ravji admitted that he had no interest in the land. On the 30th March 1895, Ravji's uncle

LIMITATION ACT, 1877—*continued.*

of limitation and dismissed the suit On second ap-

in the suit as originally filed by the first plaintiff, who was only benamidar, had been cured by the Court acting under s 27 of the Civil Procedure Code *Bhola Pershad* v. *Ram Lall, I. L. R., 24 Calc, 34,* and *Subodini Debi* v. *Cumar Ganoda, I. L. R, 14 Calc, 400,* followed *Per* RANADE, *J.*—The first plaintiff as benami purchaser had full right to bring the suit. If the true owner holds back, a

ing his right to sue The rights of the parties must

held by the lower Court of Appeal RAVJI APPAJI KULKARNI v. MAHADEV BAPAJI KULKARNI

[I. L. R., 22 Bom., 672

17. —————— *Suit for damages for illegal distraint—Joinder of parties—Party plaintiff joined beyond period of limitation.*—A suit for compensation for illegal distraint of crops was

then barred by limitation. *Held* that the whole suit was not barred by limitation in consequence of the provisions of s 22 of the Limitation Act. JAGDEO SINGH v. PADARATH AHIR . I. L. R., 25 Calc., 285

18. ——

When the objection was taken to the form of the suit on the ground of the non-joinder of *A's* three brothers, it was too late to add them as co-plaintiffs by reason of s. 22 of the Limitation Act (XV

suit was, as regards them, time-barred; since such a suit would have been virtually a suit by himself alone, and therefore bad. *Boydonath Bag* v. *Grish*

LIMITATION ACT, 1877—*continued.*

Chunder Roy, I. L. R., 3 Calc. 26, disapproved of. KALIDAS KEVAL DAS v. NATHU BHAGVAN

[I. L. R., 7 Bom, 217

19. —————— *Necessary party added after period of limitation expired—Objection for*

interested with the plaintiff might be added, and that the suit should proceed, although the said parties were added after the period of limitation for bringing the suit had expired *Kalidas Kevaldas* v. *Nathu Bhagvan, I L. R., 7 Bom, 217,* distinguished SHIREKULI TIMAPA HEGADE v AJJIBAL NARASHINV HEGADE

[I. L. R, 15 Bom, 297

20 —————— *Addition of parties on appeal—Civil Procedure Code, 1877, ss. 32, 582.*—*S* sued *N* and *R* jointly and severally for certain moneys The Court of first instance gave *S* a decree for such moneys against *N,* and dismissed the suit

against *R,* the former not having appealed from the decree of the Court of first instance within the time allowed by law RANJIT SINGH v. SHEO PRASAD RAM . . . I. L. R., 2 All., 487

21. —— —— *Civil Procedure Code*

NAIK . . . . I. L. R, 17 Mad, 12

22. —————— *Assignee of right of suit—Leave to carry on suit.*—S 22 of Act XV of 1877 does not apply to a case in which the persons to whom a right of suit is assigned after the institution of the suit obtain leave to carry on the suit. SUPUT SINGH v. IMRIT TEWARI

[I. L. R., 5 Calc, 720: 6 C. L. R., 62

23. —— *Names of partners inserted as defendants instead of name of company.*—In a suit against the Elgin Mills Company for recovery

LIMITATION ACT, 1877—*continued.*

the Limitation Act refers to cases where a new defendant is substituted or added, and that, when the partners of the Elgin Mills Company were brought on the record as defendants in January 1883, there was no institution or addition of new defendants, the defendants having been comprised in the designation of Elgin Mills Company, and at most what was done was to correct a misdescription. PRAGI LAL *v.* MAXWELL . . . . I. L. R, 7 All., 284

24. ——————— *Assignment pendente lite—*

Limitation Act (XV of 1877), the suit was barred by limitation. *Suput Singh* v. *Imrit Tewary, I. L. R., 5 Calc., 720,* distinguished. HARAK CHAND *v.* DENONATH SAHAY. BHAGBUT PROSAD SINGH *v.* DENONATH SAHAY . I. L. R., 25 Calc., 409

25. ——————— *Partnership—Non-join-*

dants then contended that the suit was time-barred under s 22 of the Limitation Act. *Held* that the case was one of misdescription, and not of non-joinder, for the action was brought in the name of the firm by its manager. The order of the words in the vernacular plaint showed that *S*, the manager, did not sue in his own name The defendants were entitled to have the name of the other partner disclosed, but it being found as a fact that *S* was entitled to sue for the firm, the addition of *M's* name on the record came within the provisions of s 27 of the Civil Procedure Code KASTURCHAND BAHIRAVDAS *v.* SAGARMAL SHRIRAM . I. L. R., 17 Bom., 413

26. ——————— *Suit by Official Liquidator—Description of plaintiff—Civil Procedure Code, s 53—Amendment of plaint.*—In a suit to recover a debt to a company which had gone into liquidation, the plaintiff was described in the plaint as "The Official Liquidator, Himalaya Bank, Limited, in liquidation," and the plaint was signed and verified in the same terms. On objection taken by the defendant, the plaint was allowed to be amended, but after the period of limitation prescribed for the suit had expired, so as to read "The Himalaya Bank, Limited, in liquidation, plaintiff." *Held* by the Full Bench that the plaint, as originally filed, was in substantial compliance with the provisions of Act VI of 1882, and that, even if it might be considered that the amendment made was necessary, such amendment did not introduce a new plaintiff into the suit so as to lie in the operation of s. 22 of Act XV of 1877 *Ghulam Muhammad* v. *Himalaya Bank, I. L. R., 17 All., 292,* overruled. *In re Winterbottom, L. R., 18 Q. B. D, 446,* distinguished. MUHAMMAD YUSUF *v.* HIMALAYA BANK [I. L. R., 18 All., 198

27. ——————— *Defendant added by Court of its own motion—Civil Procedure Code (1882), s. 32.*—No question of limitation arises, and s. 22 of the Limitation Act does not apply when the Court of its own motion acts under s 32 of the Code of Civil Procedure, and orders that the name of any person be added as a defendant. *Grish Chunder Sasmal* v. *Dwarka Nath Daida, I. L. R., 24 Calc., 640,* and *Oriental Bank Corporation* v. *Charriol, I. L. R., 12 Calc., 642,* followed. *Khadir Moideen* v. *Rama Naik, I. L. R., 17 Mad., 12,* referred to;

28. ——————— *Municipalities Act, N.-W. P. and Oudh, s. 43—Suit against Secretary to Municipal Committee—Substitution of President as defendant.*—Where, after a notice required by s. 43 of Act XV of 1873 had been left at the office of a municipal committee, such committee were sued within three months of the accrual of the plaintiff's

sued in the name of their officer, and that such substitution, when applied for, should have been made. MANNI KASAUNDHAN *v.* CROOKE [I. L. R., 2 All., 296

29. ——————— *Non-joinder of parties—*

Court.—The plaintiffs, as sharers in certain rent

have joined the co-sharers, passed an order making them co-plaintiffs, and then confirmed the lower Court's decree on the ground that at the time (3rd July 1890) the co-sharers were made plaintiffs, the suit was barred by limitation. On appeal to the High Court,—*Held*, remanding the case, that the

LIMITATION ACT, 1877—*continued.*

tiffs should not suffer from it. RAMKRISHNA MORESHWAR v. RAMABAI . . I. L. R., 17 Bom., 29

30. ——— *Amendment of plaint—Defendant sued in different capacity from that originally stated* —The creditor of a deceased trustee of a temple sued two persons as his successors in office to recover the amount of the debt. One of the defendants died; the other, who was the brother of the deceased, pleaded that other persons were joint trustees with him, and should have been impleaded with him, he also alleged that the debt in question was a private debt, and had not been incurred by the deceased as a trustee The persons named were joined as defendants, and they repeated the above allegation. The plaintiff thereupon amended the plaint and prayed for a personal decree against the original surviving defendant, and the others were removed from the record. The amendment took place more than three years after the date when the debt was payable, but the suit had been instituted within that period *Held* that the claim was not barred by limitation SAMINATHA v. MUTHAYYA

[I. L. R., 15 Mad., 417

——— s. 23 (1871, s. 23)

See PRESCRIPTION—EASEMENTS—RIGHTS OF WATER . I. L R., 6 Bom, 20
[1 C. W. N., 96

1. ——— *Consent decree for payment by instalments.*—A consent decree for payment by instalments is governed by s. 23, Act IX, and, on default in the payment of one instalment, the whole amount becomes due. RUGHOO NATH DASS v SHIROMONEE PAT MOHADEBEE . 24 W. R., 20

2 ——— *Breach of contract—"Continuing breach"—Act IX of 1871 (Limitation Act), s 23* —The purchasers of certain land agreed to pay the vendors certain fees annually in respect of such land, and that in default of payment the vendors should be entitled to the proprietary possession of a

[I. L. R., 4 All., 493

3. ——— *Breach of covenant for title—Continuing breach—Covenants for quiet possession and further assurance.*—S L, by a deed

LIMITATION ACT, 1877—*continued.*

love and affection, to grant and convey the same property, the value of which exceeded R100, to *B R*, the husband of *S*, his heirs, executors, administrators, and assigns. The last-mentioned deed contained covenants on the part of *S L*, his heirs, executors, and administrators, with *B R*, his heirs, executors, administrators, and assigns, for title to "the hereditaments and premises hereinbefore expressed to be hereby granted and assured unto and to the use of the said *B R*, his heirs, executors, administrators, and assigns." *S* died in the lifetime of *B R*, who in 1867 mortgaged the premises comprised in the deed of 15th July 1865 and died in 1868. In 1870 the mortgagee sold the premises by auction, under the power of sale contained in the mortgage-deed; the plaintiff became the purchaser, and the mortgagee, on 24th March 1871, executed to him a conveyance of the premises, which were then in the possession of the surviving members of the family of *B R* and *S*. The plaintiff having failed in a suit in ejectment against the parties in possession, who relied on the

executed, *viz*, *15th July 1865, and consequently* a suit in respect of such breach was barred, but the covenant for quiet possession, admitting of a continuing breach, was not barred so long as the breach continued, and that of the covenant for further assurance there had been no breach at all, as such covenant would be broken only by refusal on the part of the covenantor or his representatives to execute a further assurance when required so to do by the covenantee or his representatives RAJU BALU v. KRISHNARAV RAMCHANDRA

[I. L. R, 2 Bom, 273

4. ——— *Bond—Interest post diem—Non-payment of principal and interest at agreed*

is committed, and there is no "continuing breach" within the meaning of s 23 nor "successive breaches" within the meaning of art. 115 of the Limitation Act (XV of 1877). MUNSAB ALI v GULAB CHAND

[I. L. R., 10 All., 85

5. ——— *Suit for restitution of conjugal rights—Demand and refusal—Continuing cause of action—Husband and wife—Suit for possession of wife* —Where a husband sued to recover possession of his wife, making the wife herself the defendant to the suit,—*Held* it was in substance a suit for the restitution of conjugal rights, and art. 35 of the Limitation Act (XV of 1877) applied. The demand and refusal, which form the starting point for limitation under art. 35, are a demand by the husband and refusal by the wife (or *vice versa*) being of full age. A positive refusal on the part of the wife to return to her husband is not essential to the husband's cause of action. *Quære*—

LIMITATION ACT, 1877—*continued.*

Whether in case of a refusal by a wife of full age to a demand made by her husband, that she should return to him, a suit by him for her recovery is barred under art. 35 of sch. II of the Limitation Act, or falls within the purview of s. 23 as based on a continuing cause of action. FAKIRGAUDA *v.* GANGI [I. L. R., 23 Bom., 307

6. ——————— *Disturbance of right of ferry—Nuisance—Continuing wrong—Cause of action.*—The disturbance of a right of ferry is in the nature of a nuisance (*Yard* v. *Ford*, 2 *Saunders*,

7. ——————— and arts. 34, 35—*Suit for restitution of conjugal rights—Wife's refusal to return to her husband—Husband and wife.*—The refusal of a wife to return to her husband and allow him the exercise of conjugal rights constitutes a

taken out of the operation of s 23 of the Act. BAI SARI *v.* HIRACHAND . I. L. R., 16 Bom., 714

HEMCHAND *v.* SHIV [I. L. R., 16 Bom., 715 note

See PINDA *v.* KAUNSILIA I. L. R., 13 All., 126

——————— s. 25 (1871, s. 26).

1. ——————— *Computation of time—English calendar.*—In calculating time for the purpose of applying the law of limitation, the computation

S. C. JOY MUNGAL SINGH *v.* LALL RUNG PAL SING [13 W. R., 183

2. ——————— *Bond—Limitation Act,*

consisted only of twenty-nine days (the 29th Pous

3. ——————— *Native date—Gregorian calendar.*—Where a bond bears a native date only, and is made payable after a certain time, that time,

LIMITATION ACT, 1877—*continued.*

4. ——————— *Native date—Month.*—The

the 6th December 1880 in the Court of Small Causes at Poona. The Judge was of opinion that the claim was barred On his referring the case to the High Court for its decision, *Held* that the period of four months was, for the purpose of ascertaining whether the suit was barred by lapse of time, to be calculated according to the Gregorian calendar, under s 25 of the Limitation Act (XV of 1877), and that the claim was not barred. RUNGO BUJAJI *v.* BABAJI . . . I. L. R., 6 Bom., 83

5. ——————— *Computation of time—Difference in calendars—Date from which time runs.*—A registered lease provided that the rent should be paid on 30th Masi Tharana. The month Masi in the year Tharana ended on the 29th day, which corresponded with the 11th March 1885 A suit to

1891.

tion.

PILLAI

——————— s. 26 (1871, s. 27).

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR . . 15 B. L. R., 361 [I. L. R., 14 Calc., 839

See PRESCRIPTION—EASEMENTS—RIGHT OF WAY . I. L. R., 1 Calc., 422 [I. L. R., 8 Calc., 956

See PRESCRIPTION—EASEMENTS—RIGHTS OF WATER . I. L. R., 5 Mad., 226 [I. L. R., 6 Bom , 20 I. L. R., 6 Calc., 394

See RIGHT OF WAY. [23 W. R , 290, 401 I. L. R., 10 Calc , 214

1. ——————— *Enjoyment "as of right"*—

WUZEER ALI . . . . 23 W. R., 52

2. ——————— *Easement—Presumption of a grant.*—In a suit to establish an easement when limitation is pleaded, the proper issues to frame under s. 26 of Act XV of 1877 are—(1) whether the easement in question was peaceably, openly, and as of right enjoyed by the plaintiff, or those through whom he claims, within two years of the institution of the suit; and (2) in the event of the above issue being found in the negative, whether there is evidence of enjoyment on the part of the plaintiff, or those through whom he claims, of such a character and

LIMITATION ACT, 1877—*continued.*

3. ———— *Right of way—Easement—User as of right—Prescriptive right.*—For the purpose of acquiring a right of way or other easement under s 26 of the Limitation Act, it is not

the English Prescription Act ABZAN v. RAKHAL CHUNDER ROY CHOWDHRY I. L. R., 10 Calc., 214

4. ———— *Easement—Light and air—Apertures—Enjoyment as of right.*—The enjoy-

obstructive right in the owner of the servient tenement, is an enjoyment "as of right" within the meaning of s 26 of Act XV of 1877. The phrase does not imply a right obtained by grant from the owner of the servient tenement. MATHURADAS NANDVALABH v. BAI AMTHI I. L. R., 7 Bom., 522

5. ———— *Prescription—Easement—Accrual of cause of action*—At any time within twenty years, should injury accrue from the recurring use of an easement to the owner of the servient tenement, a new cause of action arises to the owner of the servient tenement, which he may put in suit within twelve years from its accrual. JOGAL KISHORE v. MULCHAND 7 N. W., 293

6. ———— *Suit for easement based on continuous user.*—A suit to establish a claim to an easement, based upon a continuous user for twenty years, must, with reference to s 27, be brought within two years from the end of such period LUCHMEE PERSHAD NARAIN SINGH v TILUCKDHAREE SINGH 24 W. R., 295

7. ———— *Easement—Prescription—User—Fishery, Right to—Limitation Act, 1877, s. 3*—The word "easement," as used in the Limitation Act, 1877, has by force of the interpretation clause (s. 3) a very much more extensive meaning than the word bears in the English law, for it includes any right not arising from contract by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to

A prescriptive right of fishery is an "easement" as defined by s 3 of the Act, and may be claimed by any one who can prove a "user" of it,—that is to say, that he has of right claimed and enjoyed it without interruption for a period of twenty years, although he does not allege and cannot prove, that he is, or was, in the possession, enjoyment, or occupation of any dominant tenement CHUNDEE CHURN ROY v SHIB CHUNDER MUNDUL [I. L. R., 5 Calc., 945: 6 C. L. R., 269

8. ———— *Jalkar - Easement*—A jalkar is not an easement within the meaning of s 27 of Act IX of 1871, but is an interest in immoveable property within the meaning of sch. II, art 145, of that Act. PARBUTTY NATH ROY CHOWDHRY v. MUDHO PAROE [I. L. R., 3 Calc., 276: 1 C. L. R., 592

9. ———— *Dispossession—Fishery—Custom—Suit to restrain fishing in certain bhils.*—In a suit to restrain the defendants from fishing in certain bhils, which admittedly belonged to the plaintiff's zamindari, it appeared that the plaintiff had let out some of the bhils to ijaradars who had sued the defendants for the price of fish taken by them from the bhils, and that the suit had been dismissed on the ground that the defendants, in common with other inhabitants of the villages in the zamindari, had acquired a prescriptive right to fish in the bhils The defendants contended that they had been in possession of the bhils for more than twelve years, and that they had a prescriptive right to fish therein, under a custom according to which all the inhabitants of the zamindari had the right of fishing. *Held* that the mere fact that the ... ppropriated ... the plain- ... limitation. ... *dho Paroe, I. L. R., 3 Calc., 276,* distinguished *Held* also that no prescriptive right of fishery had been acquired under s. 26 of the Limitation Act, and that the custom alleged could not, on the ground that it was unreasonable, be treated as valid *Lord Rivers v Adams, L R, 3 Ex D., 361,* followed LUTCHMEEPUT SINGH v SADAULLAH NUSHYO [I L R., 9 Calc., 698: 12 C. L. R., 382

10. ———— *Easement—Right of way—Prescription—Effect of illustrations*—On the 6th of April 1878, the plaintiffs sued for obstructing a right of way for boats in the rainy season The defendants admitted the obstruction but denied the right of way The plaintiffs proved that the right was peaceably and openly enjoyed, and actually used by them, claiming title thereto as an easement and as of right, without interruption, from before 1855 down to November 1875, since when no actual user of the way by the plaintiffs had taken place The lower Appellate Court dismissed the suit on the ground that the plaintiffs had made no actual use of the way within two years previous to the institution of the suit *Held,* reversing the decision of the Court below, that, notwithstanding Act XV of 1877, s 26 illus (*b*), actual user within two years previous to the institution of the suit is not necessary in order that the right claimed may be acquired under Act XV of 1877, s 26 Illustrations in Acts of the Legislature ought never to be allowed to control the plain meaning of the section to which they are appended, especially when the effect would be to curtail a right which the section in its ordinary sense would confer. KOYLASH CHUNDER GHOSE v. SONATUN CHUNG BAROOIE [I. L. R., 7 Calc., 132: 8 C. L. R., 281

11. ———— *Easement—Prescription—Right of way—Continuance of enjoyment as o*

LIMITATION ACT, 1877—*continued.*

right—Cessation of user—Actual user.—No rule can

of the statutory period of twenty years, there must, when there is no user for a long time, be circumstances from which the Court can infer the continuance of enjoyment as of right over the whole statutory period, and the cessation of the user must be at least consistent with such continuance. The

from facts, rather than one of fact, and if there are no facts to sustain the inference, a decision in favour of such enjoyment cannot stand. The plaintiffs sued the defendant for the declaration of a right of way, as acquired under s. 26 of the Limitation Act, over a plot of land belonging to the defendant. It was alleged that in April 1892 the defendant dis-

1895, obstructed the disputed way by erecting sheds. The present suit was instituted on the 25th November 1895. *Held* that, the enjoyment of the right of way on the part of the plaintiffs not having con-

12. ———— *Suit to restrain co-sharer from appropriating portion of property to his own particular use.*—The Limitation Act, 1871, s. 27, does not apply to a suit to restrain one co-sharer in a joint property from appropriating to his own particular use a portion of such property without the consent of other co-sharers. BISSAMBHAR SHAHA *v.* SHIB CHUNDER SHAHA . . 22 W. R., 28

13. ———— *Easement—Riparian proprietors—Obstruction to flow of drainage water—Prescription—Right of action—Special damage.*—*Held* that the right of a superior riparian proprietor to have the drainage water from his lands permitted to flow off in the usual course is not an easement within the meaning of Act IX of 1871. *Held* further that the defendants, lower riparian

LIMITATION ACT, 1877—*continued.*

14. ———— *Construction of statute—Act when applicable to Crown—Easement—Profit à prendre—*

against

The rule

Crown is

named in it applies to India. *Semble*—The provisions of s. 26 of the Limitation Act (XV of 1877)

relate to the limitation of suits, but to an entirely different matter, *viz.*, the creation of rights by the enjoyment of them, which is a branch of the substantive law. The section is clearly in prejudice of the Crown's rights, and the other provisions of the

either by custom or prescription, does not apply to a right of pasturage claimed by a village in the Presidency of Bombay as against the Government. The

kharabo or waste land, that it had never been set apart under the Land Revenue Code, s. 38, for grazing purposes, and that the plaintiffs could not

that there was a break in the period of prescription, and therefore rejected the plaintiffs' claim. The

dismissed. Whether the plaintiffs' claim was con- ... Act or ... essential ... ght" to ... ie right

of free pasturage which certain villages enjoy according to the recognized custom of the country, and which was admittedly enjoyed by the plaintiffs' village, does not necessarily confer the right of pasturage on any particular piece of land, although it may confer the right of having sufficient land set apart for the purposes of the village, and in the

LIMITATION ACT, 1877—*continued.*

absence of special circumstances pointing to the tank in question having been used for grazing by the villagers in exercise of a right other than and independent of the aforesaid right, the user by the plaintiffs could only be referred to that general right. SECRETARY OF STATE FOR INDIA *v.* MATHURABHAI [I. L. R., 14 Bom., 213

15. ———— *Enjoyment as of right for twenty years—Right of ownership—Right of easement as distinguished from a right of ownership—Bombay Regulation V of 1827, s 1—User.*—In order to acquire an easement under s. 26 of the

GOVARDHANDAS . . I. L. R., 16 Bom., 592

———— s. 28 (1871, s. 29).

See FOREIGN COURT, JUDGMENT OF. [I. L. R., 2 Mad., 400

See MALABAR LAW—MORTGAGE. [I. L. R., 13 Mad., 490

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION. [I. L. R., 14 All., 193

See POSSESSION—ADVERSE POSSESSION. [I. L. R., 21 Bom., 509

See POSSESSION—EVIDENCE OF TITLE [I. L. R., 1 Bom., 592

See RES JUDICATA—JUDGMENTS, ON PRELIMINARY POINTS [I. L. R., 21 Bom., 91

1. ———— *Effect of Law of Limitation (Act XIV of 1859).*—The Indian Law of Limitation (Act XIV of 1859) as to realty was held to bar the remedy, but not to extinguish the right. DOE D. KULLAMMAL KUPPU *v.* PILLAI [1 Mad., 85

VENKOPADHYAYA *v.* KAVARI HENGUSU [2 Mad., 36

2. ———— ...

...

3. ———— *Limitation in relation to persons in undisturbed possession—Delay.*—The law of limitation operates against parties who have been guilty of delay and in favour of persons in possession. S. 28 of the Limitation Act has no application to persons who are in possession, and who have had no occasion to sue for recovery of possession. ORR *v.* SUNDRA PANDIA . . I. L. R., 17 Mad., 255

4. ———— *Regulation VI of 1831 (Madras), s. 3—Village service inam—Village blacksmith.*—The mortgagee of manam land attached to the hereditary office of village blacksmith sued

suit. *Held* that, as the plaintiff could have sued only under Regulation VI of 1831 in a Revenue Court, he could not, under Limitation Act, 1877, s. 28, acquire a title by prescription to the land. PICHUVAYYAN *v.* VILAKKUDAYAM ASARI [I. L. R., 21 Mad., 134

5. ———— and Bom. Reg. V of 1827 ...

there is a sufficient bar to the claimant's right to recover, if he ever had any. The cause of action to establish title and the cause of action to recover arrears which rest on such title are not distinct and independent of each other; so that, if the former be barred, even those arrears which may be within the law of limitation cannot be recovered. MADVALA BIN GINAPA *v.* BHAGVANTA BIN DEVJI [9 Bom., 280

6. ———— *Trees—Land.*—Trees growing upon land are "land" within the meaning of s. 29, Act IX of 1871. Possession of land by a wrong-doer for twelve years not only extinguishes the title of the rightful owner of such land, but confers a good title on the wrong-doer. JAGRANI BIBI *v.* GANESHI . . I. L. R., 3 All., 435

7. ———— *Possession of land forming endowment.*—When the land in suit was alleged to have formed an endowment, it was held that the

8. ———— *Possessory title—Mortgage* ...

of a Malabar tarwad, and the rents and profits of the land paid by the mortgagee were enjoyed exclusively by *K*, the representative of one branch, for fifteen years,—*Held* that *K* had not acquired thereby a title to the estate mortgaged. CHATHU *v.* AKU [I. L. R., 7 Mad., 26

9. ———— *Suit for hereditary office and for account.*—Where the plaintiff's right of succession to an hereditary office accrued in 1847, when *A* took it under a will, and it was held his possession was adverse to the plaintiff,—*Held* that plaintiff was precluded from setting up a fresh right

LIMITATION ACT, 1877—*continued.*

as accruing to him on the death of *A* as the only male survivor of the founder's family, by the provisions of s 29 of the Limitation Act, IX of 1871. MANALLY CHENNA KESAVARAYA *v.* MANGADU VAIDELINGA . . . I. L. R., 1 Mad., 343

10. ———— *Adverse possession—Bar of remedy and extinguishment of right—Debts*—The 28th section of the Limitation Act of 1877 extends the doctrine that twelve years' adverse possession of land not only bars the remedy of the rightful owner, but extinguishes his right to property other than land; but *per* GARTH, *C.J.*—*Quære*—Whether this principle would apply to debts RAM CHUNDER GHOSAUL *v.* JUGGUTMONMOHINEY DABEE [I. L. R., 4 Calc., 283: 3 C. L. R., 336

11. ———— *Operation of Limitation Act IX of 1871 and Act XV of 1877.*—The Limitation Acts (IX of 1871 and XV of 1877) merely bar the remedy, but do not extinguish the debt. NURSING DOYAL *v.* HURRYHUR SAHA [I. L. R., 5 Calc., 897: 6 C. L. R., 489

MOHESH LAL *v.* BUSUNT KUMAREE [I. L. R., 6 Calc. 340: 7 C. L. R., 121

Overruling the cases of KRISHNA MOHUN BOSE *v.* OKHILMONI DOSSEE . I. L. R., 3 Calc., 331

NOCOOR CHUNDER BOSE *v.* KALLY COOMAR GHOSE . . . I. L. R., 1 Calc., 328

and RAM CHUNDER GHOSAUL *v.* JUGGUTMONMOHINEY DABEE . . I. L. R., 4 Calc., 283

See also VALIA TAMBURATI *v.* VIRA RAYAN [I. L. R., 1 Mad., 228

and MADHAVAU *v.* ACHUDA [I. L. R., 1 Mad., 301

12. ———— and arts. 91 and 95—*Extinguishment of right and title—Plea of fraud—Fraudulent sale—Vendor's right to plead fraud after twelve years from the date of sale—Vendor and purchaser.*—In 1872 the plaintiffs induced the first defendant by fraud and misrepresentation to execute in their favour a deed of sale of the property in dispute. They did not pay the purchase-money nor obtain possession of the property. The defendant remained in possession, and in 1873 mortgaged the property with possession to defendants Nos. 2 and 3, and in 1880 sold it to defendant No 2 In 1884 the plaintiffs sued [illegible] on their title [illegible] impeached the [illegible] plaintiffs' title [illegible] the defendant [illegible] on the ground of fraud within three years, as provided by art. 91 or 95 of the Limitation Act (XV of 1877), or within twelve years from the date of sale, it was too late for him to set up the plea of [illegible]

The consideration money was never paid by the plaintiffs and possession was never given. There was no complete contract of sale passing the property. Therefore the plaintiffs' only right was to sue for specific performance of the contract. Such [illegible]

boná fide purchaser for value, and no satisfactory evidence was given by plaintiffs, on whom lay the onus that these defendants had notice of the deed of sale. *Per* JARDINE, *J.*—S 28 of the Limitation Act (XV of 1877) does not apply to the case of defendants, who rely on an actual possession which has never been disturbed. HARGOVANDAS LAKHMIDAS *v.* BAJIBHAI JIJIBHAI . I. L. R., 14 Bom., 222

13. ———— *Civil Procedure Code (1882), s. 214—Right of pre-emption asserted by one in possession under an otti mortgage in Malabar—Limitation Act, sch. II, art. 10.*—Land in [illegible]

Held that the defendants' right of pre-emption was not extinguished under Limitation Act, s. 28, and that they were not precluded from asserting it by [illegible]

———— art. 3 (1871, art. 3; 1859, s. 15).

S. 15 of Act XIV of 1859 was repealed by, and its provisions re-enacted in, the Specific Relief Act (I of 1877), s. 9 of which is in similar terms, with the addition of the modification made in s. 15 by s. 26 of Act XXIII of 1861, and an additional provision that no such suit shall be brought against the Government.

1. ———— *Suit to recover paramba after forcible dispossession*—S. 15 did not abridge any rights possessed by a plaintiff, but was intended to give him the right, if dispossessed otherwise than by course of law, to have his possession restored without reference to the title on which he held. [illegible]

CHANGARACHAN KANDIL CHEMBATA AMBU [2 Mad., 313

See KUMUL DUTT *v.* MOHUN MOLLA [15 W. R., 278

2 ———— *Unlawful dispossession by Government officers*—When a Deputy Collector, acting as agent for a minor, uses powers which belong to the Government alone for the resumption of invalid lakhiraj tenures, and by virtue of those powers resumes lands for the benefit of the minor and unlawfully dispossesses the previous holder,—*Quære*—

LIMITATION ACT, 1877—*continued.*

Whether such a dispossession is within the contemplation of s. 15, Act XIV of 1859, or not. That

against him. If he sues after six months have expired, the parties to the suit are left in the same condition as they would have been in under the former law with reference to the production of proof. PROTAB CHUNDER BUROOAH *v.* KANTAESWURREE DABEE . . . . . . 2 W. R., 250

3. ———— *Proof of title—Possession.* —In a suit brought on the 11th March 1872, to recover certain plots of land (*a*) as re-formations

plaintiffs took possession thereof as of re-formed lands and had been maintained in possession under awards under Act IV of 1840, but that in 1868 they were ousted by the Collector who assessed the same under Regulation XI of 1825 and settled them with the co-defendants. *Held* that s 15, Act XIV of

LECTOR OF BACKERGUNGE . L R, 7 I. A., 73

———— art. 7 (1871, art. 7; 1859, s. 1, cl 2).

1. ———— *Suit for servant's wages.* —A suit for servant's wages was governed by the limitation prescribed by cl. 2, s. 1. NOBIN CHUNDER MOZOOMDAR *v.* KENNY [5 W. R., S. C C. Ref., 3

2. ———— *Household servant*—

MANAKAL BHAVATHRADAN BHATTA THIRIPAD *v.* ERANGOT TRIKOVIL PISHARETH RAMA PISHAROTI [I. L. R., 7 Mad., 89

3. ———— *Suit for arrears of monthly payment for instruction* —A suit for arrears of a monthly payment agreed to be made for instruction in fencing and wrestling is not governed by the 7th clause of the Limitation Act, as that clause does not apply to the pay of a teacher or instructor. PYLWAN JARKAN SAHIB VASTHATH *v.* JENAKA RAJA TEVAR [8 Mad., 87

4. ———— *Chowkidar—Servant*— Under Act XIV of 1859, a chowkidar was held to be a servant within the meaning of s 1, cl. 2, of that Act. GOLAMEE *v.* POSLAN . 18 W. R., 28

LIMITATION ACT, 1877—*continued.*

The following were held not to be servants —

A manager of a company. IN THE MATTER OF THE GANGES STEAM NAVIGATION COMPANY [2 Ind. Jur., N. S., 181

A tahsildar or collector of rent. ARUN CHANDRA MANDAL *v.* RAMANATH RAKHIT [1 B. L. R., S. N., 20

S C OROON CHUNDER MONDUL *v.* ROMANATH RUKHIT . . . 10 W. R., 280

A mohurir under an amin for batwara purposes. ABHAYA CHARAN DUTT *v.* HARO CHANDRA DAS BUNIK . . 4 B. L. R., Ap., 68

S. C OBHOY CHURN DUTT *v.* HURO CHUNDER DOSS BUYEE . . . 13 W. R., 150

A mooktear. NITTO GOPAL GHOSE *v.* MACKINTOSH 6 W. R., Civ. Ref., 11

5. ———— *Employer and labourer.*—

share of the produce. *Held* the parties were not in the position of employer and labourer ANDI KONAN *v.* VENKATA SUBBAIYAD . 2 Mad., 387

Under the present Limitation Act, the servant must be a household servant to come within art 7.

6. ———— *Suit by one servant against another* —Cl 2, s 1, applies only to suits for wages brought by a servant against the person liable as the master in whose service he had been employed, and

limitation as to each month's salary commences from the time at which the salary became due, *i.e.*, the end of the month, and not from the date of the dismissal of the servant. KALI CHURN MITTER *v.* MAHOMED SOLEEM . 6 W. R., Civ. Ref., 33

———— art. 10 (1871, art. 10; 1859, s. 1, cl. 1).

1. ———— *Possession—Constructive and actual possession.*—Under the Act of 1859, the possession necessary under the corresponding clause was held to be not a mere constructive possession, but actual manual possession. GOSHAIN GOBIND PERSHAD *v.* FATIMA . . . 2 W. R., 5

KUMAR ALI *v.* AZMUT ALI . 6 W. R., 383

MAHOMED HOSSEIN *v.* MOHSUN ALI [7 W. R., 195

JAI KUAR *v.* HEERA LAL . 7 N. W., 5

LIMITATION ACT, 1877—*continued.*

And under the present Act the cause of action dates from the obtaining of physical possession in cases where it is practicable to obtain it.

2. ——— *Actual possession—Posses-* [illegible]

[illegible]

v. MAHOMED YAKOOB KHAN . . 3 W. R., 225

3. ——— *Suit for pre-emption* — In pleading limitation as a bar to a suit for pre-emption the defendant must show that he was in possession more than a year before the plaint was filed. HOSSEINEE KHANUM *v.* LALLUN [W. R., 1864, 117

4. ——— *Pre-emption, Suit for*— [illegible]

not when such sale is made, but when the conditional sale becomes absolute. Under art 10, sch. II of Act XV of 1877, the period of limitation runs from the date physical possession is taken of the whole of the property sold. JAIKARAN RAI *v.* GANGA DHARI RAI [I. L. R., 3 All., 175

JANKEE KOER *v.* LEKRANEE KOER [W. R., 1864, 285

5. ——— *Suit for pre-emption*— [illegible]

decree, in execution of which he obtained possession. *Held* that the suit of the plaintiff who claimed pre-emption was not barred by limitation, as it was instituted within one year from the date on which the vendee, whose purchase was sought to be set aside, obtained actual possession of the property to which his title, originally conditional, had become absolute. RADHEY PANDEY *v.* NUND KOMAR PANDEY [2 Agra, Pt. II, 164

6. ——— *Pre-emption—Possession after sale in execution of decree of conditional sale.* —In 1861, *B* purchased conditionally certain immoveable property, which in 1865 was attached in execution of a decree. In 1871, the conditional sale having been foreclosed, *B* obtained a decree for possession of such property. In February 1875, he obtained mutation of names in respect of such pro- [illegible]

ledged having received possession of such property in execution of his decree. *K* sued him in November 1876 to enforce his right of pre-emption in respect of such property. *Held* that limitation ran from the date when *B* obtained such possession of the status of his conditional vendor as entitled him to mutation of names and to the exercise of the rights of an owner, and that the suit was barred by limitation. The principle laid down in *Jageshar Singh* v. *Jawahir Singh, I. L. R., 1 All., 311,* followed BIJAI RAM *v.* KALLU . . . I. L. R., 1 All., 592

7. ——— *Mortgage—Conditional sale—Time from which period begins to run.*— A conditional vendee who was in possession [illegible]

vendee sued for possession of the property by virtue of the conditional sale having become absolute. He obtained a decree, in execution of which he obtained, on the 30th April 1879, formal possession of the property according to law. On the 23rd March 1880, a suit was brought against him to enforce a right of pre-emption in respect of the property. *Held* that the period of limitation for such suit ran, not from the expiration of the year of grace, but from the 30th April 1879, the date the conditional vendee obtained possession in execution of his decree. PRAG CHAUBEY *v.* BHAJAN CHAUDHRI . I. L. R., 4 All., 291

Contra, BUDDREE DOSS *v.* DOORGA PERSHAD [2 N. W., 284

8. ——— *Purchase by mortgagee—Claim for pre-emption—Cause of action.*—Where [illegible]

9. ——— *Suit for pre-emption—Purchase by mortgagee in possession.*—When a mort- [illegible]

10. ——— *Pre-emption, Suit for*— [illegible]

[I. L. R., [illegible] All., [illegible]

11. ——— *Sale by mortgagor of usufructuary mortgage—Possession of vendee—Cause of action.*—When landed property sold by a mortgagor is at the time of sale in the usufructuary possession of the mortgagee, the vendee must be held to have taken possession in the sense of the limitation law at the time when he acquired possession of that [illegible] the [illegible] sion [illegible] alid [illegible] by

LIMITATION ACT, 1877—*continued.*

cl. 1, s. 1 of Act XIV of 1859, should be computed from the date of such possession and not from the

12. ——— *Suit for pre-emption—*

suit should be calculated from the date of the sale, and not from the date of the redemption of mortgage
RUSTUM SINGH *v.* MAHURBAN SINGH
[5 N. W., 179

13. ——— *Pre-emption—Actual possession—Purchase of equity of redemption—Held*

does not take "actual possession" of the property

I. L. R., 1 All

14. ——— *Suit for pre-emption—Cause of action—Mutation of names—Sale, Date*

SHOOK ALLEE KHAN *v.* IMDAD ALLEE KHAN
[1 N. W., 9 · Ed. 1873, 8

15. ——— *Suit for pre-emption—Possession*—On the 19th December 1876, *A* gave *T* a mortgage of his share in a certain village. The terms of the mortgage were that *A* should remain in possession of his share and pay the interest on the

that of *A* in the proprietary registers in respect of the share. On the 8th February 1878, *G* sued *T* and *A* to enforce his right of pre-emption in respect of

LIMITATION ACT, 1877—*continued.*

not entitled to reckon the year from the date on

16. ——— *Suit to enforce pre-emption of share of undivided mehal—Physical possession.*—A share in an undivided zamindari mehal is not susceptible of "physical possession" in the sense of art. 10, sch II of Act XV of 1877 Limitation,

17. ——— and art. 120—*Mahomedan law—Pre-emption—Conditional sale—Right of pre-emption among co-parceners—Private partition of puttidari estate*—*A* and *B* had certain

tioned putti in execution of a decree which they had

18. ——— *Joint sale of undivided mehal and other property.*—In a suit to enforce a

19. ——— *Wajib-ul-urz—Co-sharers—Effect of perfect partition—"Physical possession"—Purchase of equity of redemption by mortgagee in possession.*—The wajib-ul-urz of three villages which originally formed a single mehal gave a right of pre-emption to co-sharers in case of transfers of shares to strangers. Afterwards the shares in these villages were made the subject of a perfec

LIMITATION ACT, 1877—*continued.*

partition and divided into separate mehals. Subse-

at the time of the sale, in possession of another of the original co-sharers under a possessory mortgage. On the 17th January 1885, this last-mentioned co-sharer

redemption by the mortgagor to the mortgagee in possession, which has the effect of extinguishing the right to redeem by a merger of the two estates in the mortgagee, it cannot properly be said that any property is sold which is capable of "physical possession" within the meaning of art. 10, sch. II of the Limitation Act. In a statute, such as the law of limitation,

which of itself conveys or ought to convey to the mind of a person notice that his right has been prejudiced. An equity of redemption is not susceptible of possession of this description under a sale by which it is transferred, and a pre-emptor impeaching such a sale has one year from the date of registration of the instrument of sale within which to bring his suit. *Held*, therefore, that the period of limitation began to run from the date of the registration of the deed of sale, and that the suit was within time. SHAM SUNDER *v.* AMANAT BEGAM

[I. L. R., 9 All., 234

20. ———— *Suit for pre-emption based on a mortgage by conditional sale—Limitation Act, art. 120—"Physical possession."*—*Held* (1) that the other conditions being present necessary to make art. 10 of the second schedule to Act XV of 1877 applicable, art. 10 would apply to a sale which in

of 1877. (4) That constructive possession, *e.g.*, by

376 ; *Jageshar Singh* v. *Jawahir Singh, I. L. R.*, 1

All., 311, and *Unkar Das* v. *Narain, I. L. R.*, 4 *All.*, 24, referred to BATUL BEGAM *v.* MANSUR ALI KHAN . . I. L. R., 20 All., 315

See RAHAM ILAHI KHAN *v.* GHASITA

[I. L. R., 20 All., 375

and ANWAR-UL HAQ *v.* JWALA PRASAD

[I. L. R., 20 All., 358

———— art. 11.

See CASES UNDER ART. 13.

1. ———— and art. 146—*Order rejecting claim under s. 246, Civil Procedure Code, 1859—Ss. 280, 281, 282 of Civil Procedure Code, 1882—*

Joyram Loot v. *Paniram Dhoba*, 8 *C. L. R.*, 54 ; and *Raj Chunder Chatterjee* v. *Shama Churn Garai*, 10 *C. L. R.*, 435, cited. GOPAL CHUNDER MITTER *v.* MOHESH CHUNDER BORAL

[I. L. R., 9 Calc., 230 : 11 C. L. R., 363

BISSESSUR BHUGUT *v.* MURLI SAHU

[I. L. R., 9 Calc., 163 : 11 C. L. R., 409

2. ———— *Civil Procedure Code, 1859,*

3. ———— *Civil Procedure Code, 1859, s. 246—Date from which period of limitation runs.*—The effect of the last sentence of s. 246, Act VIII

4. ———— *Civil Procedure Code, 1859, s. 246—Money-debts*—Act VIII of 1859, s. 246,

or be sued for it under s. 243. A person thus sued would not be barred because of the lapse of a year

LIMITATION ACT, 1877—*continued.*

from setting up any ground of defence which he may have against the claim. RAMBUTTY KOORE v. KAMESSUR PERSHAD . . 22 W. R., 36

5. ———— *Goods illegally seized in execution of decree—Suit by owner.*—A person suing for goods which have been illegally sold in execution of a decree, or their value, must, under art. 11, sch II, Act XV of 1877, bring his suit within one year from the time when the adverse order in the execution-proceedings was made. SHIBOO NARAIN SINGH v. MUDDEN ALLY

[I. L. R., 7 Calc., 608: 9 C. L. R., 8

6. ———— *Civil Procedure Code, 1859, s. 246—Suit for possession by virtue of inheritance of portion of attached property.*—It was held that the mere fact that the plaintiff sued to recover possession, by virtue of inheritance, of one-fourth only of certain immoveable property, to which he had laid claim, when attached in execution of decree, on the

RAM . . . . . . 7 N. W., 113

7. ———— *Suit to avoid sale in execution of decree of Small Cause Court passed without jurisdiction.*—*A* obtained a money-decree upon a bond in a Small Cause Court against *B*, by which it was declared that certain landed property hypothecated by the bond was to be primarily liable for the debt. The decree was transferred to the Court of

recover possession In special appeal it was held that the decree of the Small Cause Court being on the face of it without jurisdiction, the suit was not barred, and the case was remanded, to be tried on the merits. LALA GANDAR LAL v. HABIBANNISSA

[7 B. L. R., 235: 15 W. R., 311

8. ———— *Civil Procedure Code, 1859, s. 246.*—T'
Act VIII
which the
been adop

[3 Mad., 139

9. ———— *Claim to attached property.*—Property attached was, on the claim of a

LIMITATION ACT, 1877—*continued.*

the judgment-debtor. *Held* that the suit was not barred. JAGGABANDHU BOSE v. SACHYI BIBI

[8 B. L. R., Ap., 39: 16 W. R., 22

10 ———— *Order passed in miscellaneous department.*—Where an order is passed in the miscellaneous department without enquiry in conformity with the provisions of s. 246, Act VIII of 1859, it is not to be regarded as an order within the terms of that section, and a suit to set aside such order would not necessarily be barred if not instituted within a year. BHOLA DUTT v. AHMED

[3 Agra, 397

11. ———— *Claim to attached property.*

12. ———— *Limitation—Applicability*

13. ———— *Claim to attached property.*

ant in bringing a regular suit to prosecute his claim was not bound to institute his suit within one year from the date of the order disallowing the investigation MAHOMED AFZUL v KANHYA LAL

[2 W. R., 263

14. ———— *Civil Procedure Code, 1859, s 246—Suit after order releasing property from attachment to establish right to bring property to sale.*—*X* caused certain property to be attached

released the property from attachment, and directed *X* to bring a regular suit *X* sued to establish his right to bring the property to sale, alleging that his cause of action arose on the day the order was passed releasing it from attachment *Held* that the suit was not barred by limitation by reason of not having been instituted within one year from the date of the order KAMRAN v. NEIT RAM 6 N. W., 185

15. ———— *Limitation Act (IX of 1871), art. 15.*—A claimant against whom an order has been made under s. 246 of the Civil Procedure Code (Act VIII of 1859) must sue to establish his right within one year from the date of such order.

LIMITATION ACT, 1877—*continued.*

But when the Civil Court disallows an investigation under s. 247 of the Code, the claimant may bring his suit within the ordinary period of limitation applicable to his suit. VENKAPA v. CHENBASAPA [I. L. R., 4 Bom., 21

See JETTI v. HOSSAIN [I. L. R., 4 Bom., 23 note

16. ———— *Suit by purchaser at sale after rejection of claim in execution-proceedings.*—

... relinquished the tenure, and that C, who had subsequently become the purchaser under a sale of arrears of Government revenue, had avoided the tenure with A's consent. The Court to which the application was made thereupon refused to enter into evidence or make any enquiry, leaving the decree-holders to establish their right by a regular suit. The order was made under Act VIII of 1859. A suit having been brought,—*Held* that the one year's limitation provided by art. 11 of Act XV of 1877 did not apply. RASH BEHARY BYSACK v. BUDDUN CHUNDER SINGH . 12 C. L. R., 550

17. ———— *Refusal to stay sale in execution of decree.*—Certain lands having been attached in execution of a decree obtained by A against B, C intervended under s 246, Act VIII of 1859 ...

... the deed after having it registered. The Court, however, refused to stay the sale, and the lands were sold in execution. More than a year from the date of the Court's refusal to stay the sale, C sued to establish his right to the lands. *Held* that the suit was not barred by limitation under s. 246, Act VIII of 1859, since the refusal of the Court to postpone the sale was not an order under that section, but was a mere refusal to order a postponement under s 247. MUKHUN LALL PANDAY v. KOONDUN LALL

[15 B. L. R., 228 : 24 W. R., 76 : L. R., 2 I. A., 210

18. ———— *Civil Procedure Code, 1859, s. 246—Claim rejected other ... merits.*— ... tion in ... made it ... attached property had been rejected, under any circumstances, to sue within one year. KHODA BUKSH v. PURMANUND DUTT . 5 W. R., 214

19. ———— *Rejection of claim on untrustworthy evidence.*—A claim under Act VIII of 1859, s. 246, rejected because the evidence produced was unworthy of credit, was on the same footing as if the claimant had failed to produce any evidence, and the order rejecting it was one on the merits and not on default. A suit therefore for the property must be brought within one year after the rejection of the claim. GOOROO DOSS ROY v. SONA MONEE DOSSIA [20 W. R., 345

SREEMUNTO HAJRAH v. TAJOODDEEN [21 W. R., 409

KAMINEE DABIA v. ISSUR CHUNDER ROY CHOWDHRY . . . . . . 22 W. R., 39

TRIPOORA SOONDUREE DEBIA v. IJJUTOONNISSA KHATOON . . . . . 24 W. R., 411

20. ———— *Order rejecting claim to attached property—Dismissal of claim on failure to produce evidence.*—Certain property having been attached in execution of a decree, the plaintiff intervened claiming the property and was directed to ...

DHONE MISSER . . . . 12 C. L. R., 43

21. ———— When a Court disallows a claim to attached property by reason of the claimant not having given any evidence in support of the claim, there cannot be said to have been any investigation under s. 278 of the Civil Procedure Code, and the order cannot be said to be one under s. 281 : art. 11 of the Lim ... a case. ... 20 W. ... 21 W. ... *Ijjutoonnissa Khatoon, 24 W. R., 411;* and *Sadut Ali v. Ram Dhone Misser, 12 C. L. R., 43,* dissented from. *Kallu Mal v. Brown, I. L. R., 3 All., 504;* and *Chundra Bhusan v. Ramkanth, I. L. R., 12 Calc., 108,* followed. *Sardhari Lal v. Ambika Prasad, I. L. R., 15 Calc., 521 : L. R., 15 I. A., 123,* explained. KALLAR SINGH v. TORIL MAHTON . . . . 1 C. W. N., 24

22. ———— *Party refused admittance to proceedings.*—The law of limitation, under s. 246, Act VIII of 1859, could not apply to a person whom the Court had refused to make a party to the proceedings under that section because he came in too late to be made such a party. ROGHOONATH DOSS MOHAPATTUR v. BYDONATH DOSS MAHARATHA [14 W. R., 364

23. ———— *Judgment-debtor not a party to proceedings.*—When the judgment-debtor was not made a party to a proceeding under s. 246 of Act VIII of 1859, he was not bound by the law of limitation to sue to establish his right to the property within one year from an order under that section relasing it from attachment IMBICHI KOYA v. KAKKUNNAT UPAKKI . I. L. R., 1 Mad., 391

24. ———— *Civil Procedure Code, 1859, s. 246—Party against whom order is "given"—Right of suit—Limitation.*—The plaintiff brought a suit to establish his right to certain property as against the claim which the defendant had successfully made under s. 246 of the Civil Procedure Code

LIMITATION ACT, 1877—*continued.*

order *Held* per SCOTLAND, C J, BITTLESTON and COLLETT, JJ. (INNES, J., doubting), that the plaintiff was a party against whom the order was "given" within the meaning of the section, and that the suit was barred by the section NETTIETOM PERENGARY-PROM *alias* PANISHERRY DAMODHEN NAMBUDRY *v.* TAYANBARRY PARAMESHWAREY NAMBUDRY [4 Mad., 472

25. ——— *Civil Procedure Code, 1859, s. 246.*—Certain lands were attached under a decree against the ancestor of the plaintiffs; but on the intervention of the defendant under s. 246, Act VIII of 1859, they were released to him. *Held* that was not an order made between plaintiffs and defendant, such as to make it necessary for the former to sue for declaration of title within one year. NITTA KOLITA *v.* BISHUNRAM KOLITA [2 B. L. R., Ap., 49

26. ——— *Civil Procedure Code, 1859, s. 246.*—On attachment of certain property, plaintiff and defendants preferred their respective claims thereto The plaintiff's claim was disallowed, but the defendants' claim was allowed The plaintiff, after the lapse of a year from the date of the order disallowing his claim, sued to recover possession of the said property. The defence was that the suit was barred by lapse of time under s. 246, Act VIII of 1859. *Held* s 246 did not apply to such a suit. DURGARAM ROY *v.* NARSING DEB [2 B. L. R, A. C., 254

S. C. DOORGARAM ROY *v.* NURO SINGH DEB [11 W. R., 134

27. ——— *Suit to establish right—*

place as between *B*, the decree-holder, and *M, N*, the judgment-debtor, not being a party to it except

[I. L. R., 3 All., 233

28. ——— *Claim by intervenors—Share of attached property.*—When intervenors claim a share of attached property, the Court should define the respective shares of the debtor and the intervenors, and sell the debtor's definite share only. If the Court omits to do so, and sells the undefined rights and interests, there is no decision under s. 246, Act VIII of 1859, of which the purchaser, by lying in wait without possession for one year, can take advantage. MONOHUR KHAN *v.* TROYLUCKHO NATH GHOSE . . . . 4 W. R., 35

29. ——— *Civil Procedure Code (Act XIV of 1882), ss. 280, 283—Mortgagee, Suit by, against mortgagor and third party who has intervened and obtained an order under s. 288, Civil Procedure Code—Execution of decree.*—Art. 11, sch. II of the Limitation Act (XV of 1877), refers only to suits contemplated by s. 283 of the Civil Procedure Code. Where, therefore, a mort-

passed under s. 280 of the Code of Civil Procedure releasing the property from attachment, and where the mortgagee, more than a year after the date of

that the suit was not barred by limitation under the provisions of art. 11, sch. II of the Limitation Act. The right that was in litigation in the proceeding under s. 280 was the right to attach and sell the property in dispute in execution of the decree which

LAL *v.* SHEO PERGASH TEWARI [I. L. R., 12 Calc., 453

30. ——— *Suit to establish right as auction-purchaser to immoveable property sold in execution of decree—Adjudication of proprietary*

1859, unless overruled in a regular suit brought within the statutory period, is binding on all persons who are parties to it, and is conclusive. PEARSON, J., *per contra.*—S. 246 of Act VIII of 1859 provides for an adjudication of proprietary right on the basis of possession, but the matter is not "*res judicata*" as

LIMITATION ACT, 1877—*continued.*

to matters in dispute between decree-holder and claimant, unless the party against whom an order is passed under s. 246 of Act VIII of 1859 fails to bring a regular suit to establish his right. In the case mentioned in the order of reference as apparently conflicting with the above view there had been no adjudication on the basis of possession by the Court passing an order under s 246 of Act VIII of 1859, and the defendant in possession was therefore at liberty to assert his proprietary title against the lien set up by plaintiff under the said order, passed without jurisdiction on the miscellaneous side. BADRI PRASAD *v.* MUHAMMAD YUSUF

[I. L. R., 1 All., 382

Distinguished in JOY PROKASH SINGH *v.* ABHOY KUMAR CHUND . . . . 1 C. W. N., 701

31. ——— *Suit to establish right.*—*B* caused a certain dwelling-house to be attached in execution of a decree held by him against *M* as the property of *M*. *J* preferred a claim to the property which was disallowed by an order made under s 246 of Act VIII of 1859. Two days after the date of such order *M* satisfied *B*'s decree More than a year after the date of such order *J* sued *B* and *M* to

the same. JEONI *v.* BHAGWAN SAHAI

[I. L. R., 1 All., 541

32. ——— *Suit for declaration of right and confirmation of possession.*—The limitation of one year in s 246, Act VIII of 1859, did not apply to a suit for declaration of right and confirmation of possession WUZEER JAMADAR *v.* NOOR ALI

[12 W. R., 33

33. ——— *Possession—Claim*—In execution of a decree against *A*, certain property was sold in 1868 During the proceedings which led to that decree, *B*, the wife of *A*, had preferred a claim to the property under s 246, on the ground that it was her stridhan, and that she had always been in possession of it Her claim was rejected in 1866, but she remained in possession. *Held* a suit by *B* to establish her title to the land was not barred by the limitation provided by s 246, though brought more than a year after her claim was refused, since she was at the time in possession and had remained afterwards in possession of the property. LAKHI PRYA DEBI *v.* KHYRULLA KAZI

[7 B. L. R., 238 note

S. C. LUCKHEE PREA DEBIA *v.* KHYROOLLAH KAZEE . . . . 14 W. R., 367

34. ——— *Claimant in possession*

for confirmation of his possession, must be brought within one year. BROJO KISHORE NAG *v.* RAM DYAL BHUDRA . . . 21 W. R., 133

35. ——— *Suit for declaration that property ostensibly held by one defendant belonged to another.*—A suit for a declaration that certain property which has been ostensibly held by one of the defendants was in fact the property of another of the defendants who was the judgment-debtor of the plaintiff, is governed by s. 246, Act VIII of 1859, and barred by the limitation of one year. ABDOOLAH *v.* SHOKOOR ALI . . . 14 W. R., 192

36. ——— *Order rejecting claim to attach property.*—Certain property having been attached in execution of a decree, the plaintiff preferred a claim to it as being his exclusive property ; but the Court in which the claim was made was of opinion that the plaintiff and the judgment-debtor were in joint possession, and it made an order directing that

37. ——— *Failure to establish claim —Suit for establishing title.*—A party failing to establish his claim to attached property under s. 246, Act VIII of 1859, on the point of possession, is not debarred from afterwards bringing a suit to establish title within the period allowed by law for bringing such suit. BISHENPERKASH NARAIN SINGH *v.* BABOOA MISSER . . . . 8 W. R., 73

38. ——— *Right of one decree-holder against another—Suit for declaration of prior lien.*—Two several judgment-creditors attached certain property, which was released upon the claim of a third party, under s. 246 of Act VIII of 1859. One

CHANDRA . . . . 3 B. L. R., Ap., 122

S. S. CHINTAMONEE SEIN *v.* ISSUR CHUNDER CHUNDER . . . . 12 W. R., 221

LIMITATION ACT, 1877—*continued.*

39. ———— *Possession—Civil Proce-*

reversed his decree because the suit was not brought within a year of a release of the property from attach-

debtor (present plaintiff). *Held* that the decision of the Principal Sudder Ameen was wrong In the present case, the claimants in possession were not so according to any of the modes of derivation which s. 246 enumerates as authorizing the continuance of the possession and the dismissal of the claim The

cause his claim was one which could not have been determined by any order made under s 246. The

KUTTIYALI *v.* VAYAKA PARAMBATH IMBICHI AMMAH [6 Mad., 416

40. ———— *Civil Procedure Code, 1859, s 246.*—Certain property having been mortgaged by *B D* to *L*, the mortgagee obtained a decree for its sale, had it sold in execution, and purchased it himself, subject to any right which certain parties (*B* and *G*), who had objected under Act VIII of 1859, s 246, might be able to establish. After this *L* sold the property to the plaintiff, who, not being able to get possession, brought a suit against the defendants in whose hands some or all of the property seemed to be and who set up that they had purchased it from *B G* and *B D* *Held* that the suit was not barred because it had not been instituted within twelve months of the date when the objections of *B* and *G* were allowed KAMESSUR PERSHAD *v* KADIR KHAN . . . . 20 W. R., 393

41. ———— *Suit to recover property sold in execution — Civil Procedure Codes (Act VIII of 1859, s 246, and Act X of 1877, ss 280, 281, and 282)* — Certain property, which the plaintiff alleged to belong to her, was sold in execution of a decree obtained by the purchaser of the property at

barred under art. 11 of sch. II of Act XV of 1877,

LIMITATION ACT, 1877—*continued.*

which refers to the section in Act X of 1877, corresponding to s. 246 of Act VIII of 1859. LUCHMI NARAIN SINGH *v.* ASSRUP KOER I. L. R., 9 Calc., 43

At that time there were pending proceedings in execution of two other decrees obtained against *M* by the first and second defendants respectively. These two decrees were obtained on a bond executed by *M*, by which an eight annas share of mouzah A was hypothecated as collateral security, and in execution of those decrees the defendants brought to sale, and themselves purchased, not an eight annas share only but the whole of mouzah A, and were allowed by the Court to set off the purchase-money against the amounts due to them under their decrees At the same time the plaintiff's

[I. L. R., 12 Calc., 400

43. ———— *Suit for possession after rejection of claim* —In a suit for possession after rejection of a claim under s 246, Act VIII of 1859, there was nothing in that section to prevent a defen-

44. ———— *Suit to set aside order removing attachment—Civil Procedure Code (1882), s 283* —A suit brought under s. 283 of the Civil Procedure Code (Act XIV of 1882) is a suit to set aside an order within the meaning of art. 11 of sch. II of the Limitation Act (XV of 1877) HARISHANKAR JEBHAI *v* NARAN KARSAN

[I. L. R., 18 Bom., 260

45. ———— *Code of Civil Procedure ss. 278, 280, 283 — Investigation of claim to attached property* —A decree-holder, against whom the release of property, attached in execution of his decree, has been ordered, after investigation under s 280 of the Code of Civil Procedure is limited by art 11 of sch II of Act XV of 1877 (the Indian Limitation Act) to one year within which to institute a suit to establish that the property is that of his judgment-debtor SARDHARI LAL *v.* AMBIKA PERSHAD

[I. L. R., 15 Calc., 521: L. R., 15 I. A., 123

LIMITATION ACT, 1877—*continued.*

46. ——————— *Civil Procedure Code*

that term as used in s. 283 of the Code of Civil Procedure so as to preclude his instituting a suit after the lapse of one year from the date of such order, the period of limitation prescribed by art. 11, sch. II, Act XV of 1877, to establish his title to, and to recover possession of, the property which has been the subject-matter of a claim in execution-proceedings, and in respect of which an order has been made under s. 280 of the Code. *G* in execution of a decree attached certain immoveable property belonging to the plaintiff, whereupon *B* preferred a claim, and on the 10th March 1881 got the attachment removed. On the 20th July 1881, *B* sold the property to *K*. In 1882 *G* instituted a suit against *B* to set aside the order of the 10th March 1881, and to have it declared that the property was liable to attachment as belonging to *the plaintiff. K was not made a party to that suit,* and it was eventually compromised between *G* and *B*, the plaintiff's title being admitted. *G* thereupon again attached the property, and was met by a claim preferred by *K*, which was allowed on the 15th August 1883. *G* then brought another suit against *K to obtain relief similar to that* claimed in his suit against *B*, but his suit was dismissed on the 17th February 1885. On the 25th September 1885, the plaintiff instituted a suit against *G*, *B*, and *K* to obtain a declaration of his title to, and to recover possession of the property. It was contended that the suit was barred by limitation, being governed by art. 11, sch. II of Act XV of 1877, inasmuch as it was brought more than one year after the date of the ... the suit ... s. 283 ... one to ... -matter ... edings, ... art. 11 did not apply to it, and it was not barred by limitation. KEDAR NATH CHATTERJI *v.* RAKHAL DAS CHATTERJI . . **I. L. R., 15 Calc., 674**

47. ——— — — *Claim to attached pro-* ... *-Neglect of* ... *of order* ... *of 1882),* ... ged certain ... im of R64 ... the mort- ... owed the mortgagee another debt of R100, which was due on a separate bond, and it contained a clause in the following terms:—"The principal sum of huns (coins) due on that document, as also this document, I will pay at the same time and take back the land along with this document as well as that document. Till then you are to continue to enjoy the land . . ." The plaintiff,

LIMITATION ACT, 1877—*continued.*

having obtained a decree against the mortgagor, attached the land in execution. The defendant (son of the original mortgagee) thereupon claimed that he held a mortgage upon it to the extent of R164. On the 9th March 1881, the Court executing the plaintiff's decree made an order allowing the defendant's claim only to the extent of R64, and directing that the land should be sold, subject to the defendant's lien for that sum. The plaintiffs bought the land at the execution-sale, and offered the defendant R64 in redemption of his mortgage, which the defendant refused. The plaintiffs then brought the present suit to recover possession. *Held* that the charge on the land did not include the old debt of R100. There were no words in the mortgage-deed expressly making that debt a charge on the property. The provisions in the deed only made the *equity of redemption conditional* on the payment of both the debts. *Quære*—Whether, under the circumstances of the case, the purchaser at the execution-sale would be bound by such a condition. *Held* also that the object of the defendant's application in March 1881 was virtually *that the Court should allow his mortgage to the* extent of R164, and the Court having allowed his claim only to the amount of R64 by its order, *pro tanto*, rejected his application. It was therefore an order passed against him, and having neglected to establish his right by suit within a *year from the date of that order, he was now* estopped from insisting on the condition. YASHVANT SHENVI *v.* VITHOBA SHETI

[I. L. R., 12 Bom., 231

48. ——————— *Civil Procedure Code*

perty was purchased by the fourth defendant in *execution of another decree against the same judgment-debtor.* It appeared that the plaintiff raised an objection by petition in the course of the proceedings in execution of the last-mentioned decree, but his petition was dismissed on his vakil stating that he was not in possession. The plaintiff now *sued in 1891 for the property purchased by him. Held* that no order had been passed under the Civil Procedure Code, s. 281, and that the suit was not barred under Limitation Act, sch. II, art. 11. MUNISAMI REDDI *v.* ARUNACHALA REDDI

[I. L. R., 18 Mad., 265

49. ——————— *Attachment of property of judgment-debtor—Application by third party to have attachment removed—Order refusing to remove attachment—Suit by claimant to establish* ... obtained a decree

in respect of which that order had been made was

50. ———— *Civil Procedure Code, 1859, s. 246—Limitation Acts (IX of 1871), sch. II, art. 15; (XV of 1877) sch. II, art. 13—Suit after rejection of claim to attached property.*—A petition under s. 246 of the Code of

51. ———— *Civil Procedure Code (Act XIV of 1882), s. 281—Order disallowing claim to attached property.*—The effect of an order made under s 281 of the Civil Procedure Code dis-

52. ———— *Civil Procedure Code (1882), s 283—Order on claim to property found not to be attached*—Land having been granted to several persons jointly, disputes arose among

LIMITATION ACT, 1877—*continued.*

chase, and he now sued in 1889 to recover the land sold to him. *Held* that the order of the 1st March 1884 was not an order within the meaning of

[I. L. R., 18 Mad., 316

53. ———— *Civil Procedure Code, s. 283—Order removing attachment—Party to execution-proceedings.*—*A* in execution of a decree against *B* attached a house. *C* intervened and the property was released from attachment. *A* then

of the order removing the attachment, to obtain

I. L. R., 18 Mad., 368

54. ———— *Civil Procedure Code, 1882, s 282—Order in attachment proceeding, Effect of—Judgment-debtor—Party against whom order in execution-proceedings was made*—The plaintiff obtained a decree The defendants appealed At the hearing of the appeal in the District Court a question was raised as to whether the defendants were not barred by limitation from denying the genuineness and validity of the lease and mortgage, they having failed to do so in certain execution-proceedings which had taken place in 1890. It appeared that in execution of a decree against the father

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decree-holder or to that of the plaintiff who intervened, and therefore they were parties "against whom the order was made" That order became conclusive against them within one year from its date, as they did not bring a suit to establish their right (art. 11, sch. II, Limitation Act, 1877). He therefore confirmed the decree of the Court of first instance. On second appeal to the High Court,—*Held*, reversing the lower Court's decree, that the defendants were not necessarily to be regarded as parties against whom the order in the execution-

LIMITATION ACT, 1877—*continued.*

proceedings was made. Whether they were or not, depended on the facts of the case. The Court

55. ——— — Civil Procedure Code (Act XIV of 1882), s. 283—Order passed in attachment proceedings not binding on judgment-debtor if not a party—Order passed without investigation—Suit to set aside the order.—One *A* was in possession of certain land as plaintiff's tenant, and in his lifetime mortgaged it with possession to the first defendant. After *A*'s death, defendant No. 1 obtained a money-decree against *A*'s heirs, and in execution attached the land. Thereupon the plaintiff sought to raise the attachment on the ground that *A* was merely a tenant-at-will whose interest ceased at his death. Defendant No. 1 contended, on the other hand, that *A* was a permanent tenant, and that his interest, as such, had descended to his heirs and was liable to attachment. On the 20th February 1892, the Court ordered the attachment to be removed without deciding the question raised by the parties which it held could not be determined in such a proceeding Defendant No 1 did not bring any suit under s 283 of the Code of Civil Procedure (Act XIV of 1882), to set aside the order and establish his right to the land. In 1894 the plaintiff filed the present suit against the first defendant and the heirs of *A* to recover possession of the land. The Subordinate Judge passed a decree in his favour against the first defendant, holding that the order in the attachment proceedings was conclusive against the latter, no suit having been filed by him within a year under s 283 of the Civil Procedure Code He, however, refused to pass any decree against

not recover. The first defendant being in possession might set up this *jus tertii*, and might plead the title of the other defendants By RANADE, *J*. on the ground that the order in the attachment proceedings having been passed without investigation of the

56. ——— Suit on title after summary order—Omission of judgment-debtor to set aside summary order—Right of purchaser from judgment debtor to sue.—On the 24th March 1879

a certain property was attached in execution of a money-decree against *S*, and was finally sold on the 22nd September 1879 and purchased by the plaintiffs' father. Subsequently to the attachment, the defendant caused the same property to be attached in execution of his decree against *R* On the 15th August 1879, *S* intervened and claimed the property as his own, but his claim was disallowed, and the property was sold on the 4th

The plaintiffs therefore brought a suit to recover possession. The Court of first instance rejected their claim, on the ground that the omission on the

affected by any subsequent act or omission of the judgment-debtor, *S*. PAYAPA *v.* PADMAPA

[I. L. R., 11 Bom., 45

57. ——— Civil Procedure Code,

the first time on.—A judgment-creditor of the plaintiff, having obtained a decree against the plaintiff, attached the house in dispute. The defendant intervened in 1878, and set up a previous purchase of the house by himself from the plaintiff The attachment was removed The judgment-creditor brought a suit against the defendant for a declaration that the property belonged to the plaintiff, and as such was liable to be attached and sold in execution. At the hearing of this suit the judgment-creditor did not appear. The defendant appeared, and produced a sale-deed, which the Court found proved, and dismissed the judgment-creditor's suit. The plaintiff now brought the present suit against the defendant to recover possession of the

execution-proceedings in 1878 was made, and the present suit was therefore barred by limitation. *Held* that the plaintiff could not be regarded as a party

LIMITATION ACT, 1877—*continued.*

58. ——————— *Execution of decree—Deceased judgment-debtor—Execution against a person not the legal representative.*—The defendants, along with one *N* and *C*, had brought a suit against one *A*, in the Civil Court at Peshawar in the Punjab, and obtained a decree, on the 23rd July 1878, for R30,545-12-0 In 1881 application for

[illegible]

applied to the Court at Peshawar treating their judgment-debtor as being then alive, for a fresh certificate to execute their decree in the Moradabad district and obtained it On the 20th of August 1885, they made an application to the District Judge of Moradabad for execution of their decree, and in

[illegible]

the brother of *A*, deceased, yet he always lived separate and carried on business separately, and that there was no connection or partnership between him and the deceased judgment-debtor, and that he had no property of the deceased in his possession. Further, that as *A* left issue, it was wrong to call him as heir to *A* and take out execution-process against him

ment-credit

A L was

judgment-d

possession of a sum of money belonging to the deceased, and therefore liable to the extent of the sum so received by him The Subordinate Judge, holding that *A L* was the brother of the deceased and had realized the amount from the Commissariat office, which he failed to prove that he paid to the deceased, ordered execution to proceed against him *A L* then instituted this suit to set aside the order of the Subordinate Judge. It was contended that the suit was in effect a suit under s. 283 of the Code of Civil Procedure, and therefore barred as not having been brought within a year from the order of the Subordinate Judge *Held* that the contention must fail, inasmuch as an essential condition precedent to a suit under s. 283 of

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such objec[illegible] disallowed, and these did not exist in this case. ANGAN LAL *v.* GUDAR MAL I. L. R., 10 All., 479

LIMITATION ACT, 1877—*continued.*

59. ——————— *Suit by reversioner for possession—Accrual of right to sue—Unsuccessful*

[illegible]

60. ——————— *Civil Procedure Code (Act XIV of 1882), ss 278 to 283 and 12—Claim*

[illegible]

Claim by defendant (mortgagee) in respect of mortgage disallowed by order.—Certain property was attached in execution of a money-decree. *A* intervened, and applied to have the property sold, subject to the incumbrances created in his favour by the

[illegible]

mortgage-bond which had been disallowed by the order in execution on the 20th February 1893 The rule is that an unsuccessful intervenor in execution-proceedings must establish his right by a regular suit within twelve months, at the expiration of which the order passed in execution becomes conclusive against him. The fact that the purchaser had filed the present suit before the year had expired, did not

[illegible]

61. ——————— *Suit for possession of immoveable property on a declaration that a certain adoption was invalid—Effect of claim preferred on*

LIMITATION ACT, 1877—*continued.*

behalf of a minor by the manager without the sanction of the Court of Wards—Court of Wards Act (Beng. Act IX of 1879), s. 55.—An order which

owner, on a declaration that certain execution-proceedings which were taken against a person who was not the legally adopted son of the last full owner, and therefore the sales held therein were not binding upon him, the defence (*inter alia*) was that the suit was barred by limitation under art. 11, sch II of the Limitation Act. *Held* that, inasmuch as the order under s 281 of the Civil Procedure Code was passed during the plaintiff's minority, and as the proceeding in which the said order was passed was not instituted by the manager with the sanction of the Court of Wards, the suit was not barred under art 11, sch. II of the Limitation Act, although it was brought more than one year after the claim was rejected. RAM CHANDRA MUKERJEE *v.* RANJIT SINGH

I. L. R., 27 Calc., 242
4 C. W. N., 405

62. ——— *Civil Procedure Code (Act XIV of 1882), ss. 278, 281, and 283—Claim preferred by a defendant's predecessor in title—Claim disallowed, but no suit brought within one year to set aside the order—Effect of such an adverse order as against the defendant in a suit, and how far binding.*—In a suit brought by the plaintiff to recover possession of certain lands by virtue of a purchase by his father, at an execution-

ing the claim, the defendant was concluded by that order, even if she was not the plaintiff in the suit, to establish her right to the property in dispute. *Nemagauda* v. *Paresha, I. L. R., 22 Bom., 640,* referred to SURNAMOYI DASI *v.* ASHUTOSH GOSWAMI . . . . I. L. R., 27 Calc, 714

63. — *Civil Procedure Code (1882), s. 280—Claim by a mokuraridar.*—Upon attachment of immoveable property in execution of decree, a claim was made on the ground that the judgment debtor had granted a mokurari in respect of the property in favour of the claimant. The claim was allowed, and the property was ordered to be sold with a declaration of the mokurari. More than a year after this order, the decree-holder who purchased at an execution-sale brought a suit for a declaration that the mokurari was fraudulent and benami and for possession and mesne profits. *Held* that the order was a judicial determination under s. 280 of the Civil Procedure Code (1882), and that therefore the suit was barred under art. 11 of the second schedule of the Limitation Act (XV of 1877). RAJARAM PANDEY *v.* RAGHUBANSMAN TEWARY I. L. R., 24 Calc., 563

64. ——— and art. 13—*Civil Procedure Code, 1882, s. 332.*—Where an application was made under s. 332 of the Code of Civil Procedure

65. ——— *Civil Procedure Code, 1859, s. 269, Order rejecting application under—Suit*

THORAI . . . . I. L. R., 8 Mad., 154

66. ——— *Civil Procedure Code, 1859, s. 269—Party not in possession.*—S. 269, Act VIII of 1859, does not contemplate that the party in actual possession must sue regularly to get possession within one year, but that the person who is not in actual possession shall do so. FIDAYE SHIKDAR *v.* OOZEEOODDEEN . . . 7 W. R., 87

67. ——— *Civil Procedure Code, 1859, s. 269—Claim by mortgagee.*—An attachment having been made in execution of a decree for rent, an intervenor claimed the land as mortgaged to himself, but his application was rejected, and he was directed by the Collector to bring his objection, if he had any, under s. 269, Act VIII of 1859. *Held* that he was not bound to do so, and his omission did not bar his right to bring a suit to establish the validity of the mortgages under which he claimed, provided it was brought within the period permitted by Act XIV of 1859 DEEN DYAL BURMO DOSS *v.* PORAN DOSS

9 W. R., 474

68. ——— *Civil Procedure Code, 1859, s 269—Obstruction in taking possession after sale in execution of decree—Order.*—A purchaser of immoveable property at a Court sale, having been obstructed by the defendant, made an application to the Court, under s. 269 of Act VIII of 1859, for

LIMITATION ACT, 1877—*continued.*

the removal of the obstruction, but subsequently withdrew his application. The Court thereupon made an endorsement upon the application to the effect that, as the applicant did not wish to proceed further, no investigation was made. *Held* that no such order had been made as was contemplated by s 263 of Act VIII of 1859, that section contemplating at least an order against one party or the other; and that, therefore, the provisions contained in the same section as to the time within which a suit may be brought, did not apply to the case of the plaintiff. BHIKHA *v.* SAKARLAL . . I. L. R., 5 Bom., 410

——— art. 12 (1871, art. 14; 1859, s. 1, cl. 3).

1. ——— *Suit to set aside fraudulent sale.*—Cl. 3, s. 1, applied only to suits to set aside sales on account of irregularity and the like, but not to suits to set aside fraudulent deeds under colour of which the sale was made. KISSEN BULLUB MAHATAB *v.* ROGHOONUNDUN THAKOOR [6 W. R., 305

2. ——— *Suit to set aside sale in*

3. ——— *Suit by mortgagee to enforce lien.*—*Held* that the limitation of one year provided by cl 3, s. 1, Act XIV of 1859, was not applicable to a mortgagee's suit seeking enforcement of his mortgage lien against the property RAI PURDIMUN KISHEN *v.* ROUSHUN SINGH . 1 Agra, 111

4. ——— *Suit to set aside sale in execution of decree—Civil Procedure Code, 1859, s. 264.*—*Quære*—Whether the one year's limitation (of suits to set aside sales in execution of decrees)

5. ——— *Sale of moveable property*

PERSHAD . . . 2 Agra, Pt. II, 175

KISHEN SOONDUR *v.* FUKEEROODEEN MAHOMED [W. R., 1864, 61

6. ——— *Suit to set aside sale in execution of decree.*—*Per* INNES, J.—Art. 12 of the second schedule of the Limitation Act, 1877, which requires suits to set aside a sale in execution of a decree of a Civil Court to be brought within one year from the date the sale becomes final, does not apply to suits in which the plaintiff was not a party to, and not bound by, the sale sought to be set aside. SADAGOPA EDINTARA MAHA DESIKA SWAMIAV *v.* JAMUNA BAI AMMAL . I. L. R., 5 Mad., 54

7. ——— *Suit to set aside sale—Suit to recover land sold in execution of decree.*—T having bought lands from A, whose husband (deceased) acquired them at a Court sale, sued S in ejectment in 1879. S pleaded limitation on the ground that B (her deceased husband) had pur-

the Limitation Act, 1877. VENKATA NARASIAH *v.* SUBBAMMA . . . I. L. R., 4 Mad., 178

8. ——— *Sale of tarwad property in execution of decree against party not sued as karnavan.*—Where a suit was brought to recover money from the defendant, who was the karnavan of a

9. ———

S had in fact purchased the decree benami for A's two joint debtors, and that consequently he had no

year from the date of the sale, was barred. ABUL MUNSOOR *v.* ABDOOL HAMID *alias* SABHAN MIAH [I. L. R., 2 Calc., 93

10. ——— *Suit to set aside sale in execution—Party to suit.*—After the death of the widow of K, the plaintiff sued as the heir of K to recover certain immoveable property alleged to have been granted to the widow for life by K for her maintenance. It appeared that in execution of a decree obtained against the plaintiff in a previous suit

LIMITATION ACT, 1877—*continued.*

in which upon the widow's death he was sued as representing the estate of the widow, the property in question was sold notwithstanding objection taken by the present plaintiff that the property was that of *K*. The plaintiff's suit was filed more than a year after the execution-sale, and it was objected that it was therefore barred. *Held* that it was not necessary that the suit should have been filed within one year from the date of the execution-sale, because (1)

was sold. KALI MOHUN CHUCKERBUTTY *v.* ANANDA MONI DADEE . . . . 9 C. L. R., 18

11. ———— *Suit to set aside sale of land in execution of decree.*—A suit to set aside a sale of land in execution of a decree against a third party was held not barred by limitation under cl. 5, s. 1, if brought within a year after the sale actually took place. DOSSEE *v.* SHEEDANEE DADIA [5 W. R., 123

See MAHOMED AFZUL *v.* KANHYA LALL [2 W. R., 263

RAM GOPAL ROY *v.* NUNDO GOPAL ROY [4 W. R., 42

But these cases were overruled by JODOONATH CHOWDHRY *v.* RADHOMONEE DOSSEE [B. L. R., Sup. Vol., 643 : 7 W. R., 256

12. ———— *Suit for possession by setting aside sale.*—In a suit not only for reversal of sale but also for possession and delaration of title, the limitation of one year does not apply. ANOOBAGEE KOOER *v.* BHUGOBUTTY KOOER. SHAM SUNDER KOOER *v.* JUMNA KOOER . 25 W. R., 148

13. ———— *Cause of action—Suit for possession after sale in execution.*—The plaintiffs sued to recover possession by declaration of right to

had purchased at a sale in execution of an *ex-parte* decree for arrears of rent obtained by the defendant No. 2 against defendant No 4 (who was the heir of No. 3's vendor), the ejectment having been effected under proceedings taken by the Deputy Magistrate under Act XXV of 1861, s 318. *Held* that the plaintiffs' cause of action accrued from the date of their ejectment. It was not a suit to set aside the sale, but a suit for possession on declaration of title. BANEE MADHUB BUKSHEE *v.* RADHA MADHUB MOZOOMDAR . . . . 22 W. R., 196

14. ———— *Suit for possession and declaration of right by setting aside sale.*—The plaintiffs sued for possession of, and a declaration of their right to, a share of a zamindari and to set aside a collusive decree which defendant No 1 obtained on the 13th September 1867 against the defendants Nos 2, 3 and 4, and to set aside the sale which was held on the 16th December 1868 in execution of that decree There was a further prayer that the names

LIMITATION ACT, 1877—*continued.*

of the plaintiffs might be substituted for that of the defendant No 1 on the Collectorate towji. *Held* that the suit, although a portion of the prayer was for possession and declaration of right, was substantially to set aside the sale of 16th December 1868, in virtue of which unless got rid of, the purchaser-defendant's title must prevail over that of the plaintiffs. Accordingly the suit came within the pur-

15. ———— *Sale subject to claimant's right.*—Where a person's claim to attached property was not rejected, but the sale took place subject to it,—*Held* that he could sue to establish his right to the property at any time within twelve years, cl. 3, s. 1, not applying to such a case. RUTNESSUR KOONDOO *v.* MAJEDA BIBEE . 7 W. R., 252

16. ———— *Suit to recover immoveable property.*—Where the plaintiff asked in terms

KINOO DOSS *v.* RUGHOONATH DOSS [4 W. R., 34

17. ———— *Suit by claimant to recover property in which judgment-debtors have no interest.*—Where a claimant, without attempting to impeach either the proceedings in the suit or in the decree or in the subsequent sale, seeks to recover property belonging to himself in which the judgment-debtors had no right or interest, and upon which,

was not incumbent on such a claimant to sue, as therein prescribed, within one year from the date of sale The plaint might ask in terms to avoid the sale, but such an allegation cannot alter the real nature of the

closed. MAHO

8 C. Agra, F. B., Ed. 1874, 145

See SHARAFATUNNISSA *v.* LACHMI NARAIN [7 N. W., 238

18. ———— *Suit by prior purchaser for possession—Sale to second purchaser.*—The one year's limitation provided in s. 1, cl 3, did not apply to a suit by a prior purchaser to assert his rights after an auction-sale of the right and interest of the judgment-debtor in the property to another purchaser subject to those rights MUNGROO SAHOO *v.* JEYDAR SINGH . . . . . 2 Agra, 231

Nor where he has become the representative by purchase of the other purchaser. BITHUL BHUT *v.* LALLA RAJKISHORE . . 2 Agra, 234

LIMITATION ACT, 1877—*continued.*

19. ———— *Suit to set aside sale in execution of decree—Suit to recover possession*—*A* purchased immoveable property at an auction-sale. The same property was subsequently purchased by *B* at another auction sale. *Held* that a suit brought by *A* against *B* to recover the property was virtually a suit to set aside the last sale, and that it should have been brought within one year from the date of that sale; and that cl. 2 (and not cl 12) of s. 1 was applicable. KRISHNAJI JOSHI *v.* MUKUND CHIMANSHET . . 2 Bom., 18: 2nd Ed., 19

Contra, LALCHAND AMBAI DAS *v.* SAKHARAM [5 Bom., A. C., 139

20. ———— *Suit to set aside execution-sale—Suit for possession of immoveable property*—The plaintiff, alleging that certain immoveable property belonging to him had been sold in execution of a decree as the property of another sued the purchaser to have the sale set aside, and to recover possession of the property. *Held* that the suit was one for possession of immoveable property to which the period of limitation of twelve years was applicable. NATHU *v.* BADRI DAS [I. L. R., 5 All., 614

21. ———— *Suit for possession after dispossession in sale proceedings in execution of decree*—The rights and interests of plaintiff's co-sharer having been sold under a decree, the purchaser possessed himself of plaintiff's share as well as of his own *Held* that, in a suit to recover, plaintiff was not bound to bring his action within one year from the date of dispossession, but had a right to the limitation of twelve years TONOO RAM GOSSAIN *v.* MOHESSUR GOSSAIN . . 24 W. R., 302

22. ———— *Suit to recover property taken in excess of right of attachment*—It is not incumbent on a person seeking, not to interfere with the sale in execution of a decree of the right, title, and interest of the judgment-debtor, but to recover what has been taken in excess under colour of sale, to sue within the period of limitation prescribed by law for a suit to set aside the sale. The mere circumstance that there is a specification at the time of the subject of the sale at the time of sale is of no force. It is not the property specified, but the right of the judgment-debtor therein, that is offered for sale and conveyed. *Mahomed Buksh* v. *Mahomed Hossein, 3 Agra, 171: S. C., Agra, F B., Ed 1874, 145,* followed SHARAFATUNNISSA *v.* LACHMI NARAIN [7 N. W., 288

23. ———— *Sale of land in execution of decree—Suit by third party to recover—Burden of proof.*—In a suit to redeem certain land demised on kanam in 1850 by *A* to the predecessor of *B*, *C*, who was in possession of the land, was made a defendant. *A* proved his title to the land and possession up to 1850. *C* pleaded title to the land. The lower Court held that *C*'s possession must be taken to have been derived from *B*, till the contrary was proved; but that the suit was barred by art. 2 of sch. II of the Limitation Act, 1877, because it had not been brought within one year from the date of the sale in 1876. *Held* that the suit was not barred by limitation NILAKANDAN *v.* THANDAMMA . . I. L. R., 9 Mad., 460

24. ———— *Decree—Sale in execution—Land described by boundaries in proclamation of sale—Land so described really comprising two separate lots—Suit by purchaser of one lot to set aside sale or for compensation*—On the 17th November 1877, a certain piece of land described in the proclamation of sale as "Survey No 294, Pot No 3, measuring 24 gunthas," the boundaries of which were also set forth, was sold by auction in execution of a decree obtained by the first defendant against defendants Nos 2, 3, and 4, and purchased by the plaintiff. The boundaries, as stated, really included another piece of land, Survey No 294, Pot No 4, which comprised 3 acres 24 gunthas. This latter piece of land was put up for sale on the following day, and was purchased by defendant No 5 On 28th November 1877, the plaintiff applied to the Court to have the sale set aside and his money returned, unless he was put in possession of all the land included in the boundaries mentioned in the proclamation, but his application was refused, and the sale was confirmed on 20th July 1878 The plaintiff on the 3rd July 1881 brought the present ordered to pay him the amount of his purchase money with interest. Both the lower Courts rejected the plaintiff's claim On appeal to the High Court, —*Held*, confirming the decree of the Court below, that the suit, regarded as one to set aside the sale, was barred by Act XV of 1877, sch II, art 12, cl (*a*) MAHOMED SAYAD PHAKI *v* NAVOJI BALABHAI [I. L. R., 10 Bom., 214

25. ———— *Suit to set aside sale in execution of decree—Suit for possession of immoveable property sold in execution of decree—Limitation Act, IX of 1871, sch. II, No 14.*—*P* obtained a decree against *M* in April 1874 in execution of which property belonging to the latter was sold in 1874, 1875, and 1876 In March 1880, this decree was reversed by the Court of last appeal In February 1881, *M* sued to set aside the sales of his property in execution of the decree and for possession of the property *Held* that, both under No 14, sch. II of the Limitation Act, 1871, and No 12, sch. II of the Limitation Act, 1877, the suit was barred by limitation. PARSHADI LAL *v* MUHAMMED ZAIN-UL-ABDIN MUHAMMED ASHGAR ALI *v.* MUHAMMED ZAIN-UL-ABDIN . I. L. R., 5 All., 573

26. ———— *Suit to set aside sale held in execution of decree—Civil Procedure Code (Act XIV of 1882), ss 311, 312.*—If on an application for execution the Court erroneously holds that the application is not barred and orders a sale, the order,

LIMITATION ACT, 1877—*continued.*

sale: a suit to set aside such a sale is governed by art. 12, cl. (*a*), of sch. II of Act XV of 1877. The word "disallowed" in s. 312 of the Civil Procedure Code has no reference to an order passed on an appeal, but refers to the disallowance of the objection by the Court before which the proceedings under

High Court, and the decree was held to have been barred. Pending these proceedings, the judgment-debtor also, on the 17th December 1878, applied, under the provisions of s. 311 of the Civil Procedure Code (Act XIV of 1882), to set aside the sale on the ground of material irregularity, but that application was ultimately rejected on the 17th May 18 9, and the sale was confirmed on the 21st May 879. On the 2nd April 1880, the judgment-debtor applied to set aside the sale on the ground that the decree, in execution of which it had taken place, had been held to be barred, and though an order setting aside the sale was made by the original C urt, it was subsequently set aside by the High Court on the 13th

See GUNESSAR SINGH *v.* GONESH DAS
I. L. R., 25 Calc., 789

27. ———— Endowment by Hindu—

obtained a decree that he should have the exclusive management every third year, but was ordered to pay costs. To enforce payment of these costs H in execu-

barred by art 12 of sch. II of Act XV of 1877. *Quære*—Whether H could have got himself reinstated in the management without bringing a suit to set aside the sale within a year from the date of the

LIMITATION ACT, 1877—*continued.*

order confirming it. TRIMBAK BAWA *v.* NARAYAN BAWA . . . I. L. R., 7 Bom., 188

28. ———— *Rights of purchasers at sales in execution of decree—Two judicial sales of*

that the two purchasers at the respective sales afterwards contested title to the property. The sale to the first purchaser was confirmed in November 1882. The sale to the second, who obtained possession, took place in October 1881, the property having been attached under the second decree in March 1883 The first purchaser on the 28th July 1884 brought a suit, to which the second purchaser was not a party, to have that attachment declared invalid. By a decree of the 14th November to that effect the second purchaser was bound as a purchaser *pendente lite*; and his possession was of no avail to him. *Held* that the attachment of March 1881, although it had preceded the institution of the first purchaser's suit of 1884, afforded no support to the second purchaser's claim, attachment under Ch XIX of the Civil Procedure Code merely preventing alienation, and not giving title. Moreover, after the first sale in 1882 there

the setting aside the second sale within the meaning of arts. 12 and 13 of sch. II of the Limitation Act (XV of 1877); nor was it set aside. That sale

L. R., 24 I. A., 170
1 C. W. N., 639

29 ———— *Minor, when bound by proceedings against him—Minors Act (XX of 1864), s. 2—Suit by a minor, one year after attaining*

was purchased by the defendant, who obtained possession in 1876. In 1879 the plaintiff attained majority, and in 1882 he brought the present suit to recover the property from the defendant. The lower Courts, regarding the suit as one to set aside the sale to the defendant, held that it was barred by limitation under art. 12 of sch. II of the Limitation Act (XV of 1877). On appeal by the plaintiff to the High Court,—*Held* that art. 12 of the Limitation Act (XV of 1877) did not apply, and that the suit was not barred. That article applied only to cases in which

LIMITATION ACT, 1877—continued.

the plaintiff would be bound by the sale if he did not succeed in getting it set aside, but in the present case the plaintiff was not bound by the proceeding in suit No. 573 of 1870, as he had not been properly represented as required by s 2 of Act XI of 1864. VISHNU KESSHAV v. RAMCHANDRA BHASKAR

[I. L R; 11 Bom., 130

30. ———— and art. 7—*Guardian —Representative of minor in a suit against him—Certificate—Act XX of 1864—Joint family—Mortgage by father and eldest son—Death of father and eldest son—Decree obtained by mortgagee against minor son represented by the widow —Sale in execution—Subsequent suit by minor to set aside sale.*—In 1862 *R* and his son A mortgaged the property in dispute to *B*. In 1863 *R* died leaving a widow *S*, and two sons, *viz.*, *A* and *P*, a minor. In 1866, *A* and *S*, the latter of whom acted for herself and as guardian of her minor son *P*, settled the account with *B*, the mortgagee, obtained a fresh advance, and passed a fresh mortgage-bond to him. In 1868 *A* died. In 1869 *B*'s assignee filed a [illegible] this decree, *D* purchased the property in dispute in 1870. In 1881 *P* filed the present suit to recover possession of the property, alleging that *D*'s purchase was invalid as against him, he having been a minor at the time of the Court sale. He subsequently assigned his interest to the respondent (second [illegible] of 1877. *Held* that the suit was not barred by limitation. *P* had not been properly represented by *S* in the suit of 1869, as she had not obtained a [illegible]

31. ———— *"Order" of Revenue officer—Judicial order.*—The "order" of a Collector or other officer of revenue, as the word is used in the latter portion of cl 3 of s 1 of Act XIV of 1859, means an order of the nature of a decree, or made by the Collector or other Revenue officer in his judicial capacity. Where a piece of land, embraced within the operations of the revenue survey [illegible] officers, but delayed bringing his suit until June 1869, the sale having taken place in January 1867, —it was held that, though more than one year had elapsed from the date of sale, the suit was not barred under the provisions of cl 3 of s 1 of Act XIV of 1859. SAKHARAM VITHAL ADHIKARI v. COLLECTOR OF RATNAGIRI . . 8 Bom., A. C., 288

32. ———— and art. 14—*Suit to set aside an act or order of an officer of Government—Suit for possession—Dispossession under an order made by officer of Government*—Arts 12 and 14 of sch. II of the Limitation Act (XV of 1877) refer to orders and proceedings of a public functionary, to which by law is given a particular effect in favour of one person or against another, subject in the regular course to a further judicial proceeding having for its object to quash them or set them aside. When an order does not fall within the authority of an official who makes it, it is legally a nullity, and therefore need not be set aside. SHIVAJI YESJI CHAWN v. COLLECTOR OF RATNAGIRI . . I. L. R., 11 Bom., 429

33. ———— *Fraud—Suit to set aside sale in execution of decree—Beng. Reg. XLV of 1793*—In a suit for the cancelment, on the ground of fraud, of an auction-sale made under the provisions of s 12, Regulation XLV of 1793, and for the reversal of a Judge's order in appeal confirming the sale, the period of limitation was held (under s. 9, Act XIV of 1859) to run at the latest from the date of the Judge's order of confirmation, and to extend to one year under cl 3, s 1 EMAET ALI KHAN v. KUMOLA KOONWAR . 11 W. R., 261

34. ———— *Suit to set aside sale.*—A sale having been effected by order of a Deputy Collector, an appeal was made to the Collector, who set aside the sale. The Commissioner, however, considering that the Collector had no jurisdiction, and that no injury had been made out, reversed the order of the Collector *Held* that the sale did not become confirmed or otherwise final and conclusive before the date of the Commissioner's order, and therefore a suit within one year of that order was in time. PRANNATH ROY v. TROYLUCKONAUTH ROY

[14 W. R., 281

35. ———— *Suit to set aside sale for arrears of Government revenue.*—A suit to set aside a sale for arrears of Government revenue must be brought within one year from the date when the sale becomes final and conclusive. RAJ CHUNDER CHUCKERBUTTY v. KINOO KHAN

[I. L. R., 8 Calc., 329

36. ———— *Suit brought to set aside sale for arrears of revenue*—Where lands had been sold for alleged arrears of revenue and bought in for Government, but the sale had not been registered under s. 38 of Madras Revenue Recovery Act (II of 1864),—*Held* that a suit brought to set aside the sale after one year from the date thereof against a *bond fide* purchaser for value from Government was barred by limitation KARUPPA TEVAN v. VASUDEVA SASTRI . I. L. R., 6 Mad., 148

37. ———— *Sale in execution of decree for arrears of revenue—Suit to recover land.*—The land of *D* was improperly sold, in execution of a

LIMITATION ACT, 1877—*continued.*

decree of a Civil Court obtained against *S*, for arrears of revenue, by the assignee of the revenue of the lands of *D* and *S* *Held*, in a suit brought by *D* to recover her land from the purchaser at the Court sale, that the suit, not having been brought within one year from the date of the confirmation of the sale, was barred by art. 12 of sch. II of the Limitation Act, 1877. SURYANNA *v.* DURGI

[I. L. R., 7 Mad., 258

38. ———— *Suit to set aside sale in execution of decree—Suit for land sold in execution as property of third parties.*—The plaintiffs sued in 1893 to recover possession of land of which their family had been in possession till 1884. The land had been sold to the defendant in 1881 in execution of a decree against the plaintiffs' cousins, but the sale had not been confirmed. A decree was passed as prayed in respect of a moiety of the land which represented the plaintiffs' share. *Held* that the decree was right. *Quære*—Whether the suit would have been barred under the one year's rule of limitation if the sale had been confirmed. *Suryanna* v. *Durgi, I. L. R., 7 Mad*, 258, doubted. *Parekh Ranchor* v. *Bai Vakhat, I. L. R., 11 Bom.*, 119, referred to NARASIMHA NAIDU *v.* RAMASAMI . . I. L. R., 18 Mad., 478

39. ———— *Bonâ fide purchasers.*—Art. 12 of that schedule which prescribes a period of one year for suits to set aside sales for arrears of revenue is intended to protect *bonâ fide* purchasers only. VENKATAPATHI *v.* SUBRAMANYA

[I. L. R., 9 Mad., 457

40. ———— *Sale for arrears of revenue—Suit for possession of land—Fraud.*—The plaintiff's land was sold by the revenue authorities for arrears of assessment due to the inamdars. The plaintiff applied to the mamlatdar to have the sale set aside on the ground of fraud on the part of the inamdar, but his application was rejected; and the sale was confirmed in July 1879. The auction-purchaser was thereupon put in possession. In 1886 the plaintiff sued to recover possession of the land in question *Held* that the suit, having been brought more than one year after the date of the sale, was barred by art. 12, cls. (*b*) and (*c*), of sch II of the Limitation Act (XV of 1877) The sale was one in pursuance of an order of the Collector or other officer of revenue, and, if not for arrears of Government revenue, was at any rate a sale for arrears of rent recoverable as arrears of revenue. The plaintiff, as occupant of the land, was bound by the sale, unless and until it was reversed, and the title of the purchaser at the sale was a perfectly good title until the sale was set aside in due course of law. BALAJI KRISHNA *v.* PIRCHAND BUDHARAM

[I. L. R., 13 Bom., 221

41. ———— *Sale under Public Demands Recovery Act (Bengal Act VII of 1880) for arrears of cesses—Confirmation of sale.*—Where the Board of Revenue discharged an order of the Commissioner, dated the 25th January 1884, which had confirmed a sale by the Collector in 1882, but afterwards on the 21st August 1886 discharged its own order and revived that of the Commissioner,—*Held* that the confirmation of sale dated only from the 21st August 1886, and that a suit brought in July 1887 to set aside the sale was not barred by Act XV of 1877, art. 12. BAIJNATH SAHAI *v.* RAMGUT SINGH . . . I. L. R., 23 Calc., 775

[L. R., 23 I. A., 45

42. ———— *Madras Rent Recovery Act (Madras Act VIII of 1865), ss. 7, 38, 39 and 40—Suit to recover land sold, without setting aside sale.*—Where a plaintiff sued to recover land alleged to have been sold under the provisions of the Rent Recovery Act, alleging that the provisions of s 7 of that Act had not been complied with, and that therefore the sale was illegal,—*Held* that the suit could not proceed without setting aside the sale, and that, the sale having taken place more than a year before the institution of the suit, the suit was barred. RAGAVENDRA AYYAR *v.* KARUPPA GOUNDAN

[I. L. R., 20 Mad., 33

43. ———— *Dispossession—Suit to* [illegible]

[illegible]

of a decree against his uncle in 1881 was not barred by limitation. KADAR HUSSAIN *v.* HUSSAIN SAHEB

[I. L. R., 20 Mad., 118

44. ———— *Suit to recover property* [illegible]

[illegible]

Calc., 307, *Balwant Rao* v. *Muhammad Husain, I. L. R., 15 All.*, 324; *Lala Mobaruk Lal* v. *The Secretary of State for India in Council, I. L. R*, 11 *Calc.*, 200; *Dakhina Churn Chattopadhya* v. *Bilash Chunder Roy, I. L. R., 18 Calc.*, 526; *Mahomed Hossein* v *Purundur Mahto, I. L. R., 11 Calc*, 287; and *Sadagopa* v. *Jamuna Bhai Ammal, I. L. R., 5 Mad.*, 54, referred to *Suryanna* v. *Durgi, I. L. R., 7 Mad.*, 258, dissented from. NAZAR ALI *v.* KEDAR NATH

[I. L. R., 19 All., 308

45. ———— *Suit by reversioner to establish his title to property sold in execution of decree obtained against a widow as representing estate—Collusion.*—A widow of a deceased Hindu represents the estate of the reversioner for some purposes; but it is her duty not only to represent the estate, but to protect it When a suit is brought on the ground that the widow did not in a former suit protect the interests of the person who was to take after her death, but collusively suffered judgment against herself and sale of her husband's property in execution, then if such person on that

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ground treats the sale as inoperative, and seeks for a declaration that it is not binding on him, art. 12, cl. (*a*), of sch. II of the Limitation Act (XV of 1877), does not apply to the suit PAREKH RANCHOR *v.* BAI VAKHAT . I. L. R., 11 Bom., 119

——— art. 13 (1871, art. 15; 1859, s. 1, cl. 5).

1. ——— *Suit to set aside summary order.—Quære*—Whether, with reference to cl. 5, s 1, a suit will lie to set aside a summary order after the expiration of one year. GOBIND NATH SANDYAL *v.* RAMCOOMAR GHOSE . . 6 W. R., 21

2. ——— *Final decision — Order dismissing appeal.*—The final decision, award, or order contemplated by cl. 5, s 1, was a final decision of the Court which had competent jurisdiction to determine the case finally, and not the order of a Court superior to such Court dismissing an appeal from the decision of such Court for want of jurisdiction. OLEO-UNISSA *v* BULDEO NARAIN SINGH [7 W. R., 151

3. ——— *Order under Act XIX of 1841—Official Trustees Act—Suit for possession—Limitation Act (XIV of 1859), s. 1, cl. 12.*—A summary order under Act XIX of 1841 for possession of property left by a deceased person is no bar to a regular suit to try the title to such property and to obtain possession under that title; it is therefore unnecessary to set aside the order before granting relief in the suit Hence the period of limitation for such regular suit is that provided by cl 12, s 1, Act XIV of 1859, namely, twelve years, and not one year as provided by cl. 5 of the same section LAKNARAIN SINGH *v* MANKOER . B. L. R., Sup. Vol., 633

S C LOKNARAIN SINGH *v* MYNA KOER [2 Ind. Jur., N. S., 191: 7 W. R, 199

4. ——— *Civil Procedure Code, 1859, s 246*—The rights and interests of one of three [illegible]

Held not barred by limitation under cl 5, s 1, and s 246, Act VIII of 1859 LALLA BEHAREE LALL *v* LALLA MODHO PERSAUD . 6 W. R., 69

5. ——— *Summary decision—Certi-* [illegible]

DOSS *v.* NUNDKISHORE DUTT [Marsh., 573: 2 Hay, 633

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S C. on appeal to Privy Council GREEDHAREE DOSS *v.* NUNDKISHORE DOSS [11 Moore's I. A, 405: 8 W. R., P. C., 25

Contra, BIPRO PERSHAD MYTEE *v.* KANYE DEYEE [1 W. R., 341

6. ——— *Suit to recover properties by the rightful heir of deceased more than one year after grant of certificate of heirship to the rival claimant—Effect of such a certificate—Practice.*—In 1877 the plaintiff applied for a certificate of heirship to one *T*, her husband's uncle, who had died in 1876 The defendant opposed the application, and alleged that *T* had left a will in her favour [illegible]

alia) for the defendant that the plaintiff's suit was barred, she having failed to apply to set aside the order granting the certificate to defendant within one year from the date of that order The Court of first [illegible]

barred. A certificate of heirship confers only the right of management of the property of the deceased, and is intended to give security to third persons in dealing with the person who claims to be the heir. [illegible]

ther the suit to determine the right claimed is in time, is to be determined by the sections of the Limitation Act relating to suits for the possession of property. BAI KASHI *v.* BAI JAMNA I. L R., 10 Bom., 449

7. ——— *Suit to set aside order under Act XXVII of 1860*—A suit to set aside a summary order passed under Act XXVII of 1860 may be brought within a year from the date of the order, but such order is no bar to a suit upon title, though brought after the year KALEE PROSUNNO MOOKERJEE *v.* KOYLASH MONEE DEBIA [8 W. R., 126

8. ——— *Order relating to landed property of intestate—Summary order*—*Held* that the Judge's order relating to the landed property of a person dying intestate, being apparently an order made without jurisdiction, had no legal operation, and was not a summary order within the meaning of the 5th clause of s. 1, Act XIV of 1859. AUGUDH NATH *v* DOORGA GIR . . 1 Agra, 241

9. ——— *Suit to eject representative of person put in possession by order of Civil Court—Summary decision*—The plaintiff was, by an order of the Civil Court in execution of a decree, to which the plaintiff was no party, ejected from the possession of a muttah. He brought a suit more than three years afterwards to eject the legal representative of

LIMITATION ACT, 1877—*continued.*

aside the order of release: and the rule of limitation

22. ———— *Suit to recover attached property to which claim has been disallowed.*—A person who has been unsuccessful in a proceeding

s. 246, and therefore the suit must be brought within one year as provided in art. 15 of the Limitation Act, 1871. The decision in *Jetti* v. *Hossain, I. L. R., 4 Bom., 23 note,* qualified. VENKAPA v. CHENBASAPA . . . . I. L. R., 4 Bom., 21

23. ———— *Suit to remove attachment—Adverse possession.*—In a suit for a partition of family property in the possession of the plaintiff

year from the date of the rejection of his petition. The plaintiff and defendants remained in possession notwithstanding the attachments. *Held* that the suit was not barred by lapse of time. MALRAJA *alias* KRISHNAMA RAJAH v. NARAYANASAMY RAJAH [4 Mad., 281

24. ———— *Suit to establish title to property ordered to be sold in execution—Suit to set aside summary order.*—The plaintiff's property was

... Court refused his application, under s 246, Act VIII of 1859, and ordered the property to be sold. *Held* that a suit to establish the plaintiff's right to such property was not a suit to set aside a summary order within Act IX of 1871, sch. II, cl. 15. KOYLASH CHUNDER PAUL CHOWDHRY v. PREONATH ROY CHOWDHRY

[I. L. R., 4 Calc., 610: 3 C. L. R., 25

25. ———— *Civil Procedure Codes (Act VIII of 1859, s. 246, and Act X of 1877, ss. 280, 281, and 282).*—V (defendant No 1) obtained a decree against W and, in execution thereof, at-

... March 1877 against V and K (the judgment-creditor and auction-purchaser), alleging that the property was the joint ancestral property

LIMITATION ACT, 1877—*continued.*

of themselves and their brother W

sch. I

the su

ture in passing s. 246 of the Civil Procedure Code (Act VIII of 1859) was that the order made under that section should be a final bar to the plaintiff's

its ruling would amount to a reversal of the order made under s 246, and the suit would fall within art. 15 of sch II of the Limitation Act (IX of 1871), which is substituted for the limitation provided by the twelve repealed words in s 246 of Act VIII of 1859. *Settiappan* v. *Sarat Sing, 3 Mad., 220,* followed. *Koylash Chunder Paul Chowdhry* v. *Preonath Roy Chowdhry, I. L. R., 4 Calc., 610,* referred to and discussed. KRISHNAJI VITHAL v. BHASKAR RANGNATH . . . I. L. R., 4 Bom., 611

26. ———— *Order declaring that*

[I. L. R., 6 Calc., 142: 7 C. L. R., 396

27. ———— *Suit to recover property sold in execution—Civil Procedure Codes (Act*

put in a claim to the property under s. 246 of Act

the schedule to that Act. *Koylash Chunder Paul Chowdhry* v. *Preonath Roy Chowdhry, I. L. R., 4 Calc., 610,* followed. LUCHMI NARAIN SINGH v. ASSBUT KOER . . . I. L. R., 9 Calc., 4

28. ———— *Execution of decree—Res judicata—Act VIII of 1859, s. 246—Civil Procedure Code (Act X of 1877), s. 278.*—In the course of certain execution proceedings in execution of a decree for arrears of rent, the decree-holder attached a tenure belonging to the judgment-debtor, who, pending the attachment, sold it to A on the 21st March 1869. A then applied, under s. 246

LIMITATION ACT, 1877—*continued.*

of Act VIII of 1859, for an order to release the

mentioned obtained another decree for arrears of rent against the same defendant, and in execution ... applied under ... to have the ... was rejected

... LUB SEN . . . I. L. R., 8 Calc., 279 [10 C. L. R., 204

29. ——— *Order substituting one judgment-debtor for another—Sale or transfer of dena-powna.*—*A*, the proprietor of an indigo concern, which comprised a patni talukh, after mortgaging the entire concern to *B*, allowed the patni talukh to be sold for arrears of rent under Regulation VIII of 1819; *C*, the dar-patnidar of the talukh, whose rights were thus extinguished, then sued and obtained a decree for damages against *A*. After *C* had obtained this decree against *A*, *A* sold his equity of redemption in the entire mortgaged concern to *B*, and by this sale, all the dena and powna, or liabilities and outstandings of the concern, were transferred from *A* to *B*. *C* then, after notice

aside the order, and for an injunction to restrain *B* from executing the decree against him *Held* that *B* was barred by limitation from suing to set aside that order, but he was entitled to an injunction restraining *C* personally from executing the decree against him DHURONIDHUR SEN *v.* AGRA BANK [I. L. R., 5 Calc., 86 . 4 C. L. R., 434

30. ——— *Civil Procedure Code (Act VIII of 1859), s 269, Summary proceedings under—Neglect to set aside order passed in such*

deceased husband purchased a house, but neglected to register his sale-certificate In attempting to recover possession he was obstructed by the defendant, who claimed the property as her own Summary proceedings under s 269 of Act VIII of 1859 were thereupon instituted against the defendant, and the defendant's claim was upheld by an order passed on the 7th November 1872 In the mean time the plaintiff's husband having died, plaintiff filed, on the 31st March 1873, a regular suit to establish her title. On the 8th July 1873, she

LIMITATION ACT, 1877—*continued.*

... the High ... iff brought ... certificate. ... claim. The ... llate Court held her suit not maintainable On appeal by plaintiff to the High Court,—*Held*, confirming the decree of the lower Appellate Court, that plaintiff's suit was barred The Subordinate Judge having, by his order of the 7th November 1872, passed in the summary proceedings, disposed of the case on the ... the defendant, to displace that ... year from its

I. L. R., 10 Bom., 604

——— art. 14 (1871, art. 16).

See BOMBAY LAND REVENUE ACT, s 135. [I. L. R., 15 Bom., 424

1. ——— *Suit for land of which a pottah has been granted by Collector after demarcation—Suit to set aside official act*—Plaintiff in 1877 claimed possession of land which had been demarcated as poramboke in 1860, and of which a

was governed by the 12 years period of limitation running from the date of the grant by the Collector. KRISHNAMMA *v* ACHAYYA I. L. R., 2 Mad., 306

2. ——— *Suit for declaration of title—Suit to set aside an order of revenue authorities—Land Registration Act (VII of 1876), s. 69.*—The Civil Court has no power to set aside an order passed under the Land Registration Act, and when a prayer for such relief is contained in a plaint which also asks for a declaration of right and title to, and confirmation of possession in, property, such prayer may be treated as mere surplusage. When therefore a plaint was filed containing separate prayers for the above relief, and when the original Court held that the main object of the suit was to have certain orders made by the revenue authorities set aside, and that the suit was accordingly governed by art. 14, sch II of the Limitation Act, and passed a decree dismissing the suit as having been brought more than a year after the date of such orders, —*Held* that such a decree was wrong, that the suit being one simply for the declaration of the plaintiffs' title in respect of the property in dispute, art. 14 had no application to the case LUCHMON SAHAI CHOWDHRY *v* KANCHUN OJHAIN

[I. L. R., 10 Calc., 525

3. ——— *Suit to set aside order of Commissioner directing payment of Government*

LIMITATION ACT, 1877—*continued.*

revenue.—A suit to set aside an order of a Commissioner directing the plaintiff to pay Government revenue at a certain rate was formerly held to be governed by cl. 16 of s. 1 of the Act of 1859; it would now probably be governed by this article. KEBUL RAM *v.* GOVERNMENT . . 5 W. R., 47

4. ——————— *Suit to set aside order of Government officer—Order null and void.*—Art. 14 of sch. II of the Limitation Act with reference to suits to set aside orders of officers of Government does not apply to a case where the order is an absolute nullity BEJOY CHAND MAHATAB BAHADUR *v.* KRISTO MOHINI DASI I. L. R., 21 Calc., 626

5. ——————— *Khoti Settlement Act (Bom. Act I of 1880), ss. 20, 21, and 22—Act or order of Settlement officer—Dhara lands—Suit for a declaration that lands were khoti lands—Jurisdiction of Civil Court—Collector, Power of—Adverse possession—Cause of action.*—A Survey Settlement officer decided in the year 1882 that certain lands situate at the khoti village of Tadil, in the Ratna-

decision being final under ss. 20 and 21 of the Khoti Settlement Act (Bombay Act I of 1880) and it having not been set aside within one year from its date, the suit was time-barred under art. 14, sch II of the Limitation Act (XV of 1877) *Held*, reversing the decree, that the claim was not time-barred. Under ss 20 and 21 of the Khoti Settlement Act, it is the

in accordance with the decision of the Civil Court. *Held*, further, that s 21 does not contemplate any "order" being made by the Survey officer between the parties; and even if framing the register be regarded as an "act" of the Survey officer, s. 22 provides for its being amended by the Collector himself, in accordance with the decision of the Civil Court *Held*, further, that although the defendants might have

officer determined that the lands were dhara, and the present suit, which was brought within six years to reverse that decision, was therefore in time. FAKI GULAM MOHIDIN *v.* SAJNAK . I. L. R., 18 Bom., 344

6. ——————— *Land Revenue Code (Bom. Act V of 1879), ss. 37, 89, 135—Land presumably the property of the plaintiff—Plaintiff in uninterrupted possession—Revenue survey—Entry of the land in the register as Government waste land—Order of the Revenue Commissioner directing land to be given to defendant No. 2—Plaintiff's dispossession—Suit against Secretary of State and defendant No. 2—Nature of the Revenue Commis-*

mesne profits. Defendants contended that the suit

missioner, set aside *Held*, further, that the order of the Revenue Commissioner was not such an order as is contemplated by art. 14, sch. II of the Limitation

v. SECRETARY OF STATE FOR INDIA [I. L. R., 24 Bom., 435

7. ——————— *Estates Partition Act (Beng. Act VIII of 1876), ss. 116 and 150—Right of suit—Suit for possession.*—A suit for possession of land of which the owners have been dis-

to set aside the Collector's order under s. 150. 14 of sch. II of the Limitation Act (XV of 1877) does not bar such a suit. LALOO SINGH *v.* PURNA CHANDER BANERJEE . I. L. R., 24 Calc., 149

——————— art. 15 (1871, art. 17; 1859, s. 1, cl. 4).

1. ——————— *Suit to set aside transfer of land made by revenue authorities.*—A suit to set aside a transfer of land made by the revenue authorities for arrears of Government revenue comes within the words of cl. 4, s. 1, Act XIV of 1859.

LIMITATION ACT, 1877—*continued.*

CHITRO NARAIN SINGH TEKAIT *v.* ASSISTANT COMMISSIONER OF THE SONTHAL PERGUNNAHS [14 W.R., 203

2. ———— *Suit to establish right to hold land rent-free.*—Where a person claiming to

———— art. 16 (1871, art 18; 1859, s. 1, cl. 4).

———— *Act XIV of 1859, s 1, cl. 4—Suit for revenue*—Cl 4 of s. 1 of Act XIV of 1859 is not applicable where the revenue, for recovery of a portion of which a suit is brought, was a payment made to the Government on account of a clear and admitted liability, the object being to save the estate from sale. Plaintiff may be entitled to recover from a co-sharer what he has paid to the

———— art. 17 (1871, art. 19).

———— *Suit for compensation for land—Cause of action.*—In a cause decided under Act XIV of 1859 the case of action in a suit for com-

———— art 19 (1871, art. 21).

See FALSE IMPRISONMENT. [I. L. R., 9 Bom., 1

———— art. 23 (1871, art 25; 1859, s 1, cl. 2)

1 ———— *Suit for malicious prosecution*—The limitation of one year prescribed by ... for injury ...cution in a ... which the ...y, and not ...charge was ... CHUNDER [8 W. R., 443

2. ———— *Suit for damages for malicious statement—Cause of action.*—In an

constitute a cause of action occurred within a year before the suit. *Held* that the action was barred by s 1, cl. 2, Act XIV of 1859. The cause of action did

3 ———— *Malicious prosecution—Termination of prosecution—Presentation of revision petition against acquittal—Commencement of period of limitation*—A suit for damages for malicious prosecution was brought more than one year from the date of the plaintiff's acquittal, but within a year from the dismissal of a revision petition which had been filed against the acquittal. On its being contended that the period of limitation should be calculated from the date of the dismissal of the revision petition, as the prosecution was only

———— art. 24 (1871, art. 24; 1859, s. 1, cl. 2).

———— *Cause of action—Suit for defamation.*—*Held* that the cause of action in a suit for damages on account of defamation of character, arises on the date of the publication of the letter containing the defamatory matter, and that a suit not instituted within one year from that date is barred by cl. 2, s 1, Act XIV of 1859. MAHOMED IMDADALLY *v* AMEER ALY 2 Agra, 47

———— art. 29 (1871, art. 30; 1859, s. 1, cl. 2).

1. ———— *Wrongful seizure of goods—Injury to personal property*—Wrongful seizure of goods under process of law was held to be not an "injury to personal property" within the meaning of cl 2, s 1, Act XIV of 1859 INDERCHUND *v* NUNDEERAM SING . . . Cor., 3

But was governed by cl. 16 of the same section NUSSEUTOOLLAH *v.* ROOP SONA BIBEE [7 W. R., 499

2. ———— *Suit for damages for detention of bullocks.*—Plaintiff's bullocks having been seized in execution of a decree obtained by defen-

3. ———— *Suit for money taken in execution of a decree—Compensation—Damages for loss of gain or interest upon money*—A suit to recover money wrongly taken under a decree is a suit for compensation to which the limitation of one

LIMITATION ACT, 1877—*continued.*

year under art. 29 of Act XV of 1877, sch. II, applies. The same limitation under the same provision applies if, to the above demand, a claim be added to recover damages for the loss of gain or interest upon the money JAGJIVAN JAVHERDAS *v.* GULAM CHAUDHRI . **I. L. R., 8 Bom., 17**

4. ——— *Mortgage—Presumption that person paying off a mortgage intends to keep the security alive—Power of Court to order refund of money wrongf*...

—In 1861 *B* g

for 30 years,

then due by *1*

sued *A* and obtained a decree that on payment of R1,20,000 *A* should give up possession of the zamindari. This sum having been paid into Court, *A* lost possession of the zamindari. On January 5th, 1875, *A* had mortgaged the whole zamindari, which consisted of 22 villages, to *M* to secure a loan of R1,00,000 borrowed by *A* to pay off the debts of *B* which *A* undertook to pay in 1861. On June 27th, 1879, *A* being indebted to *M* in the sum of R1,78,000 paid *M* R1,00,000 and undertook to pay the balance out of the income of the estate, *M* releasing the 22 villages from the mortgage of January 5th, 1875. On June 28th, 1879, *A* executed a mortgage of the 22 villages to *L* to secure repayment of R1,30,000. Of this sum,

January 5th, 1875. On January 30th, 1875, *A* borrowed from *S* R43,000 and mortgaged to her 10 of the 22 villages of the zamindari In the suit brought by *B*'s successor against *A* to recover the zamindari *L* was a party, but *S* was not. In that suit *L* obtained an order for payment of R1,00,000 of the sum paid into Court by the zamindar. In a suit brought in 1885 by *S* against *L* to have her debt declared a first charge on the money paid into Court by the zamindar it was contended by *L* that *S* could have no decree for repayment of this sum, and that, if the money was wrongly paid under the order of the Court to *L*, it was wrongfully seized within the meaning of art. 29 of sch. II of the Limitation Act *Held* that the Court had power to order a refund, and that art 29 of sch. II of the Limitation Act was not applicable RUPABHAI *v.* AUDIMULAM . . **I. L. R., 11 Mad., 345**

——— **art. 30 (1871, art. 36).**

1. ——— *Suit for compensation for value of goods short delivered—Suit for breach of contract.*—The defendants were owners of a fleet of steamships plying periodically along the coast of British India by which they undertook to convey for freight parcels of goods for all persons indifferently from and to specified ports In a suit against the defendants for compensation for the value of goods short delivered,—*Held* that cl. 30, sch II of the Limitation Act, would apply to the defendants; but that as this suit was for breaches of the contracts to deliver, it was governed by cl. 115. *Semble*—

LIMITATION ACT, 1877—*continued.*

Cl. 30, sch. II of the Limitation Act, applies to suits for compensation for loss or damage to goods arising from malfeasance, misfeasance, or nonfeasance independent of contract. BRITISH INDIA STEAM NAVIGATION COMPANY *v.* MAHAMMED ESACK & CO. **I. L. R., 3 Mad., 107**

2. ——— *Action against railway company for loss of goods.*—An action against a railway company for loss of goods, when there is no contract, is governed by sch. II, cl. 30, of the Limitation Act *B. I. S. N Co.* v. *Mahammed Esack, I. L. R., 3 Mad., 107,* followed. KALU RAM MAIGRAJ *v.* MADRAS RAILWAY COMPANY **I. L R., 3 Mad., 240**

3. ——— *Suit for value of goods carried by railway company, and lost—Railways Act (IV of 1879), s. 11—Claim for compensation for loss of goods.*—In January 1890, a box containing rupees was delivered by the plaintiffs to the defendant company in Bombay to be carried to Saugor. From the evidence it appeared that the plaintiffs did not intend to insure the box. The box was taken to the booking office at the station, and the parcel clerk asked what it contained, and was told that it contained coin, and he learned casually that the amount was R6,000. The clerk charged R18-1-0 for the box, which was the "treasure rate" for carriage This sum was paid, and the box was duly despatched, but was lost or stolen in the course of transit The plaintiffs sued to recover the R6,000. The defendants contended that, having regard to the provisions of s. 11 of Act IV of 1879, they were not liable, ina...

defendants for compensation for losing goods, and fell within art. 30, sch II of the Limitation Act (XV of 1877), and that, as this suit was not brought until after the expiration of two years from the date of the loss, it was barred by limitation. GREAT INDIAN PENINSULA RAILWAY CO. *v.* RAISETT CHANDMULL . . **I. L. R., 19 Bom., 165**

Reversing on appeal RAISETT CHANDMULL *v.* GREAT INDIAN PENINSULA RAILWAY CO. **I. L. R., 17 Bom., 723**

4. ——— *Carrier by railway—Loss—Non-delivery of goods—Onus of proof.*—Five

the grain, 512 bags only, having previously obtained from his agent receipts for the full number as arrived at Sholapur. In a suit by the plaintiff to recover the price of the bags not delivered, brought after more than two, but within three, years of the time when the rest of the goods were delivered, the defendants claimed that the suit was barred by the provisions of art. 30 of sch II of Act XV of 1877, as not having been brought within two years of the time "when the loss occurred." *Held* that mere

LIMITATION ACT, 1877—*continued.*

non-delivery of the bags was no proof of their loss, the onus of proving which as an affirmative fact lay on the defendants before they could claim the benefit of the special limitation of two years provided in art. 30 of sch. II of Act XV of 1877, and that the suit, therefore, was in time. MOHANSING CHAWAN *v.* CONDER . I. L. R., 7 Bom., 478

5 ——— and art 115—*Bill of lading—Contract, Breach of, for delivery of goods—Onus of proof of loss of goods.*—Where a plaintiff brings a suit for breach of contract for non-delivery

approved. DANMULL *v* BRITISH INDIA STEAM NAVIGATION COMPANY . I. L. R., 12 Calc., 477

1. ——— art. 32—*Suit for the removal of trees—Civil and Revenue Courts—Act XII of 1881, s. 93 (b).*—*Held* that a suit by a landholder for the

Singh, I. L. R., 3 All., 85, Amrit Lal v. Balbir, I. L. R., 6 All, 68, and *Kedarnath Nag v. Khetterpaul Srittrutno, I L R., 6 Calc., 341,* referred to GANGADHAR *v.* ZAHURRIYA [I. L. R., 8 All., 446

sequences arising from such perversion, such a suit will be governed by art. 32, sch II of the Limitation Act. *Gangadhar v. Zahurriya, I. L. R., 8 All, 446,* distinguished. MUSHARAF ALI *v.* IFTKHAR HUSAIN . I. L. R., 10 All., 634

3 ——— *Bengal Tenancy Act (VIII*

to such a case. *Kedarnath Nag v. Khetturpaul*

4. ——— *Suit for removal of trees*

8 All., 446, and *Musharaf Ali v Iftkhar Husain, I. L. R, 10 All, 634,* referred to. JAI KISHEN *v* RAM LAL . I. L. R., 20 All, 519

5 ——— *Bengal Tenancy Act (VIII*

brought by a landlord against a tenant where the primary relief sought was a mandatory injunc-

SHAROOP DASS MONDAL *v* JOGGESSUR ROY CHOWDHRY . I. L. R., 26 Calc., 564

SAROOP DAS MONDOL *v.* JOGESHUR PAL CHOWDHRY . 3 C. W N., 464

——— art. 34 (1871, art 41).

——— *Suit for recovery of person of wife—Suits under Act XIV of 1859.*—Suits for the recovery of a wife's person were, under the Act of 1859, held to be governed by cl 16 of s. 1 of that Act. BHUGNA *v.* GUNGOOA . 2 Agra, 170

——— art. 35—*Suit for possession of wife making wife defendant—Restitution of conjugal rights—Demand and refusal—Continuing cause of action—Limitation Act (XV of 1877), s 23*—Where a husband sued to recover possession of his wife making the wife herself the defendant to the suit,—*Held* it was in substance a suit for the restitution of conjugal rights, and art 35 of the Limitation Act (XV of 1877) applied The demand and refusal, which form the starting point for limitation under art. 35, are a demand by the husband

refusal by a wife of full age to a demand made by her husband. that she should return to him, a suit by him for her recovery is barred under art. 35 of

LIMITATION ACT, 1877—*continued.*

sch. II of the Limitation Act or falls within the purview of s. 23 as based on a continuing cause of action. FAKIRGAUDA *v.* GANGI

[I. L. R., 23 Bom., 307

——— **art. 36 (1871, art. 40).**

1. ——— **and art. 23**—*False complaint to Magistrate—Attachment and detention of*

A in 1879 brought a suit against *B* to establish his title to the grain, which was finally rejected on the 21st of June 1880, and *B* recovered his grain on the 30th of September 1880, but in a damaged condition. *B*, on the 13th of November 1881, sued *A* for damages for wrongful detention of his grain, and its consequent deterioration in quality and value

RAPA KULKARNI *v.* FAKIRAPA KENARDI

[I. L. R., 7 Bom., 427

2. ——— *Suit to recover money paid into Court, but afterwards recovered from third person in execution of decree*—A suit to recover money paid by defendant into Court which was payable to the plaintiff and which was afterwards recovered by the defendant in the execution of a decree against a third person under an order of the Court executing the decree, was a suit substantially for damages to which art. 26, sch. II of Act IX of 1871, applied, and was barred, the cause of action having arisen at the date of the taking by the defendant of the money claimed. DEBI DAS *v.* NUR AHMAD . . . . . . **7 N. W., 174**

3. ——— *Suit to set aside sale or for compensation—Boundaries erroneously described in sale proclamation—"Falsa demonstratio."*—On

by the first defendant against defendants 2, 3, and 4, and was purchased by the plaintiff. The second piece of land was sold on the following day and purchased by defendant No. 5. On 28th November, the plaintiff applied to have the sale set aside and his money refunded unless he was put in possession of

LIMITATION ACT, 1877—*continued.*

was, at any rate, entitled to damages or compensation because of the land as defined by the survey number proving to be of less acreage than that included in the boundaries, and the lower Court had held such a claim as barred also under art. 36, sch. II, of the Limitation Act (XV of 1877). *Held* that the suit, regarded as one for compensation, was not barred, as three years had not elapsed since the confirmation of the sale when the suit was brought—art. 36 applying only to suits for compensation for tortious acts independent of contract. But the claim for compensation was not maintainable, as the ... tified by ... No. 3, ... ment of ... might be properly regarded as *"falsa demonstratio."* MAHOMED SAYAD PHAKI *v.* NAVROJI BALABHAI

[I. L. R., 10 Bom., 214

4. ——— **and art. 115**—*Shipping—Collision—Suit for damages for loss of ship by*

management of his vessel, and must be brought within two years under the provisions of art. 36 of sch. II of the Limitation Act (XV of 1877). From the provisions of arts. 36 and 115 of sch. II of the Limitation Act (XV of 1877), the intention of the Act appears to be that not more than two years should be allowed for bringing a suit founded on tort, except in certain well-defined particular instances. ESSOO BHAYAJI *v.* STEAMSHIP "SAVITRI"

[I. L. R., 11 Bom., 133

5. ——— *Suit for damages for mis-*

LIMITATION ACT, 1877—*continued.*

the provision of art. 36. SURAT LALL MONDAL *v.* UMAR HAJI . I. L. R., 22 Calc., 877

6. ——— *Suit for damages for cut-*

[2 C. W. N., 265

7. ——— *Proceeding under Com-*

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9. ——— *Chairman of Municipal Council—Principal and agent—Liability for embezzlement by manager.*—During the tenure of his office by the Chairman of a Municipal Council, the manager embezzled sums of money. On the Council,

LIMITATION ACT, 1877—*continued.*

within three years, but more than two years thereafter, suing its late chairman to recover the amount lost by reason of the embezzlement on the ground

limitation. SRINIVASA AYYANGAR *v.* MUNICIPAL COUNCIL OF KARUR . I. L. R., 22 Mad., 342

——— art. 37 (1871, art. 31).

See PRESCRIPTION—EASEMENTS—RIGHTS OF WATER . I. L. R., 6 Calc., 394

The period for a suit for obstructing a watercourse is changed from two to three years by the Act of 1877.

——— *Suit for obstructing water-*

limitation of twelve years. BUDDUN THAKOOR *v.* SUNKER DOSS . W. R., 1864, 106

VISWAMBHARA RAJENDRA DEVA GARU *v.* SARADHI CHARANA SAMANTARAYA GARU . 3 Mad., 111

——— art. 39 (1871, art. 43).

1. ——— *Suit for compensation for trespass to land—Right to declaratory decree.*—

taking pos-

The District

the ground

laintiff from

s barred by

2. ——— *Right of caste to exclusive worship—Infringement of right.*—Four persons of

LIMITATION ACT, 1877—*continued.*

barred by art. 43 of sch. II of Act IX of 1871, and that nothing in the law of limitation prevented the establishment of such a right as that denied, merely because the first act of interference with it was more than a stated number of years ago. Such acts are not continuous like possession, and their only operation is to create, where often and consistently repeated during a long period, a presumption of their lawful origin ANANDRAV BHIKAJI PHADKE *v.* SHANKAR DAJI CHARYA . . I. L. R., 7 Bom., 323

3. ———— and art. 143—*Suit for damages for trespass—Suit to recover immoveable property from trespasser*—The limitation of three years provided in cl 43, sch. II of the Limitation Act (IX of 1871) applies only to suits for damages on account of trespass, and not to suits to recover immoveable property from a trespasser, for which the period of limitation is twelve years, as provided by cl. 143. JOHARMAL *v.* MUNICIPALITY OF AHMEDNAGAR . . . I. L. R., 6 Bom., 580

pass causing a fresh right of action, and that the suit was not barred by cl. 16, s. 1, Act XIV of 1859. RAMPHUL SAHOO *v.* MISREE LALL . 24 W. R., 97

———— art. 40 (1871, art. 11: 1859, s. 1, cl. 2).

———— *Suit for account of profits—Infringement of patent—Copyright Act (XX of 1847), s. 16—Patent Act (XV of 1859), s. 22*—In a suit for an account of profits obtained by the infringement of an exclusive privilege, the period of limitation, the

II, Act IX of 1871 KINMOND *v.* JACKSON [I. L. R., 3 Calc., 17

———— art. 42.

There was no special provision under the former Acts, 1859 and 1871, for damages caused by a wrongful injunction.

———— *Suit for damages caused by wrongful injunction.*—It was under the Act of 1859 doubted whether such a suit was governed by cl 2, s 1 of that Act, the Court inclining to the opinion that it was not NANDA KUMAR SHAHA *v.* GOUR SANKAR [5 B. L. R., Ap., 4: 13 W. R., 305

Under both the former Acts, therefore, the general limitation of six years would probably have been applicable: now under art. 42 of the present Act, the period is three years from the cessation of the injunction

———— art. 44—*Suit for possession by a person on attaining majority of property sold by guardian*—A suit by a person to recover possession of land sold by his guardian during his minority without legal necessity is governed by art. 44, sch. II of

[5 C. W. N., 218

———— art. 45 (1871, art. 44; 1859, s. 1, cl. 6)

1. ———— *Assessment for revenue or*

by a Revenue officer under the judicial powers conferred by the regulations mentioned in such clause. HUREE MOHUN GHOSAUL *v.* GOVERNMENT . [2 N. W., 226

2. ———— *Judicial award—Proceeding of Settlement officer as to cess.*—*Held* that the proceeding of the Settlement officer representing a cess as a source of income to the zamindar was not a judicial award, and the limitation provided in cl. 6, s. 1, Act XIV of 1859, was not applicable to a suit to set aside that proceeding. RAM CHUND *v.* ZAHOOR ALI KHAN . . . . . 1 Agra, 134

3. ———— *Order of Revenue authority*

4. ———— *Award of Revenue Court—Judicial award—Limitation Act, 1859, s. 1, cl. 6.*—Cl. 6 of s 1 of Act XIV of 1859 applies only to a judicial award, and not to a determination by

5. ———— *Entry made by Settlement officer.*—An entry made by a Settlement officer in the report of a co-sharer and on the strength of the report of the patwari and canoongoe in the absence of the party against whom it is made, was not an award within the provisions of s. 1, cl. 6, of Act XIV of 1859. KINHAR DANSHA *v.* GOKURUN 3 Agra, 316

6 ———— *Suit to contest adjudication of boundaries by Revenue Court under Act I of*

under Regulation VII of 1822, open to question by regular suit in the Civil Court within three years (cl 6, s. 1, Act XIV of 1859). SUJJAD *v.* SAHIT ALI . . . . . . 3 Agra, 140

LIMITATION ACT, 1877—*continued.*

7. ——————— *Order of Collector with*

8. ——————— *Suit to set aside partition.*—A suit to avoid a batwara division by the Collector may be brought within six years; s. 1, cl. 6, of Act XIV of 1859 does not apply to it. ODDOY SINGH *v.* PALUCK SINGH 16 W. R., 271

9. ——————— *Suit to vary boundaries in survey award.*—A suit substantially to vary the boundaries laid down in a survey award must be brought within three years from the date of the award. JANKEERAM MOHUNT *v.* HARADHAN BANERJEE [W. R., 1864, 38

10. ——————— *Act of 1871, art. 44—Proceedings by Settlement officer to decide possession—Award—Beng. Reg. VII of 1822.*—*D* died in 1860 leaving him surviving his first wife *G*, his second wife *B*, his mother *E*, and *M*, his son by a woman to whom he had been married by the "gan-

in possession, and observing that it was not shown that possession was joint, referred the case to the Settlement officer. The Settlement officer, without making any inquiry, disposed of the case on the evidence taken by the Assistant Settlement officer, and

he had obtained under the proceeding of the Settle-

sch. II of Act IX of 1871, or No. 45, sch. II of Act XV of 1877, as the proceeding of the Settlement officer was not an award under Regulation VII of 1822. BHAONI *v.* MAHARAJ SINGH [I. L. R., 3 All., 738

11.

12. ——————— *Settlement award—Beng. Reg. VII of 1822.*—On a Collector proceeding to settle a mortgaged estate, both mortgagee and mortgagor appeared before him and contended for the

13. ——————— *Act XIII of 1848.*—*Suit*

and establish the right of persons who were not

[2 Agra, 258

14. ——————— *Survey award, Appeal*

15. ——————— *Survey award—Suit for reversal of, and for possession.*—Where *A* sued for reversal of a survey award, and for recovery of possession, alleging dispossession subsequent to the date of the award,—*Held* that his suit was not barred by reason of its being brought beyond three years from

LIMITATION ACT, 1877—*continued.*

the date of the award. MOZAFFUR ALLY *v.* GIRISH CHANDRA DAS [1 B. L. R., A. C., 25 : 10 W. R., 71

title to, and to recover possession of, the lands after three years and within the general law of limitation. KANTO PROSAD HAZARI *v.* ASAD ALI KHAN [5 C. L. R., 452

See SHIBO DOORGA CHOWDHRAIN *v.* HOSSEIN ALI CHOWDHRY . . . . . 8 W. R., 218

17. ———— *Cause of action, Date of.*

—— art. 46 (1871, art 45 ; 1859, s. 1, cl. 6).

1. ———— *Order of Settlement officer*

SINGH . . . . . 2 N. W., 425

2. ———— *Suit for possession—*

award binding on the defendant, and ... therefore was not barred by limitation under cl. 6, s. 1, Act XIV of 1859. RUGHOOBUR SINGH *v.* HURREE PERSHAD . . . . 6 W. R., 76

3. ———— *Survey award—Suit for possession—Res judicata.*—In a thakbust map land was demarcated as belonging to *A*. *B* claimed that it belonged to him jointly with *A*. On 15th November 1858, the map was rectified by demarcating the lands to *A* and *B* jointly. *B* afterwards brought a suit against *A* in the Munsif's Court to recover the value of some mangoes which grew on two plots of the land in question; and it was decided on 12th December 1864 in favour of *B* on the ground that the plots belonged to *A* and *B* jointly. On 11th December 1865, *A* brought his suit against *B* for a declaration of right and confirmation of possession, to set aside the survey award, and for amendment of the thakbust map. *A* alleged that he was no party to the thakbust proceedings, and that he had been in possession ever since. *Held* (overruling the decision of the Courts below) that the suit was barred, so far as it asked to have the thakbust map amended, under cl. 6 of s. 1, Act XIV of 1859; and that a suit by a person in possession to have his title confirmed was not a suit to recover property within cl 6 of s. 1, and was not barred by reason of its not being brought within three years from the date of the award. MAHIMA CHANDRA CHUCKERBUTTY *v.* RAJKUMAR CHUCKERBUTTY [1 B. L. R., A. C., 1 : 10 W. R., 22

ditary cultivators, and referred them to the Civil

5. ———— *Award of Settlement officer.*—*Held* that the plaintiffs' claim to lands awarded to defendant in settlement proceedings was not barred by the period of limitation provided in cl. 6, s. 1, Act XIV of 1859, as they were no parties to the settlement proceedings and no judicial award or order affecting them was passed by the Settlement officer. RAMAISHER SINGH *v.* SHAIVA ZALIM SINGH [2 Agra, 8

6. ———— *Settlement award—Beng.*

presumption that they were not in possession at the time, and as their suit was in substance and effect a suit to recover property comprised in an award, the suit was barred by limitation, not having been instituted within three years. GUNESHEE LALL *v.* TEKAM KOER . . . . . 5 N. W., 78

LIMITATION ACT, 1877—*continued.*

——— art. 47 (1871, art. 46; 1859, s. 1, cl. 7).

1. ——— *Suit for property respect-*

2. ——— *Verbal order of Magistrate under Act IV of 1840.—Held* that a verbal order of the Magistrate under Act IV of 1840 cannot be regarded as an order or award within the meaning of the term of cl. 7, Act XIV of 1859. GUNGA PERSHAD *v.* MAHOMED KOOTOOB ALUM 2 Agra, 27

3. ——— *Order in suit under Act IV of 1840—Benamidar—N*, in 1852, purchased from *R* a patni talukh in the name of *H*. In 1854 *N* died, leaving two sons, one of whom was *K*, and a widow. The sons allowed the widow to remain in possession. In December 1854 *R* made a complaint

H R and the purchaser to recover possession. *Held* (reversing the decision of the Courts below) that the suit was not barred by s 1, cl. 7, of Act XIV of 1859. The mere fact that the Act IV award was passed against *H*, a benamidar of the plaintiffs, was not sufficient to show that they were bound by that award unless evidence was given that they gave authority to *H*, express or implied, to act in the matter on their behalf. KHAGENDRONATH MALIK *v.* RAKHAL DAS SIRKAR [2 B. L. R., S. N., 1

4. ——— *Order of Magistrate for attachment.*—Where a Magistrate passed an order for attachment on the finding that neither of the ... *Held* that it ... within the ... 1859, and that clause was not applicable. CHUJ MULL *v.* KHYRATEE [3 Agra, 65

6. ——— *Order to record letter settling proceedings.*—Where the result of certain ...

ordered the Judge's letter to be put with the record,—*Held* that such order was not an order in the sense of Act XIV of 1859, s 1, cl. 7 MOSAHEB ALI *v.* NUND KISHORE . . . 20 W. R., 310

7. ——— *Act XIV of 1859, s 1, cl 7—Order as to possession under Criminal Procedure Code, 1861, s 318.*—It was held under s. 1, cl. 7, of the Act of 1859, that that clause did not apply to an order as to possession under the Criminal Procedure Code, s. 318 DOORJUN SINGH *v.* SHIBBA [3 N. W., 171

GOBIND CHUNDER SHAHA *v* ASHRUF ALI MEAH. GREGORY *v* GOURDOSS SHAHA . 8 W. R., 490

UNDHOOB NARAIN *v.* CHUTTURDHAREE SINGH [9 W. R., 480

8. ——— *Order under Criminal Procedure Code, 1861, s. 319—Order of attachment.*—The plaintiff sued for the establishment of his proprietary right to, and possession of, a certain ghat, or bathing place The lower Courts held that the suit was barred by limitation under cl. 46, sch II, Act IX of 1871, the suit not having been brought within three years from the date on which the Magistrate, acting under Ch. XVIII of ... XXV ... 1861, ...

opinion that the latter portion of the order amounted to an attachment of the property in dispute under s. 319 of Act XXV of 1861. It was held that the order to the tehsildar was not an attachment contemplated by that section DURGA *v.* MANGAL [7 N. W., 35

9. ——— *Suit for possession of char* ...

possession has been confirmed by the Magistrate, and each one of the parties to that proceeding who claimed against them. It does not apply in favour of one of the parties who has subsequently succeeded by

LIMITATION ACT, 1877—*continued.*

CHUNDER CHOWDHRY v. DELAWAR HOSSEIN [6 C. L. R., 93

10. ——— *Order of Criminal Court as to possession—Parties bound by order—Criminal Procedure Code (1882), s. 145*—The limitation of three years prescribed by art. 47, sch. II of the Limitation Act (1877), applies to all persons bound by, or parties to, an order under s. 145 of the Criminal Procedure Code, and to any other persons who may claim the property through any such persons ... *Aukhil Chow-* ...GENDRA ...KISHORE ROY CHOWDHRY . I. L. R., 23 Calc., 731

11. ——— *Criminal Procedure Code, 1861, Ch. XXII, s. 320—Order of Criminal Court* ...

self unable to "determine who was in actual possession of the lands," placed them in charge of the Sub-Magistrate. *Held* that this was not an order respecting ...

inapplicable. AKILANDAMMAL v. PERIASAMI PILLAI [I. L. R., 1 Mad., 309

12. ——— *Possession, Suit for—Order of Criminal Court for possession.*—In a ...

Magistrate's order, and not from the date of the order passed by the Court of Session. Art. 47 of sch. II, Act XV of 1877, refers to immoveable as well as moveable property. KANGALI CHURN SHA v. ZOMURRUDONNISSA KHATOON [I. L. R., 6 Calc., 709: 8 C. L. R., 154

See AKILANDAMMAL v. PERIASAMI PILLAI [I. L. R., 1 Mad., 309

13. ——— *Criminal Procedure Code* ...

LIMITATION ACT, 1877—*continued.*

Chuj Mull v. Khyratee, 3 Agra, 65, and *Akilandammal v. Periasami Pillai, I. L. R., 1 Mad., 309,* referred to. GOSWAMI RANCHOR LALJI v. GIRDHARIJI [I. L. R., 20 All., 120

14. ——— and art. 144—*Ejectment,* ...

A zamindar on the 3rd May 1876 agreed to let lands on lease to *A* and his co-sharers, who, on the zamindar's ...

... against certain persons who had been let into ...

15. ——— *Khoti Act (Bom. Act I of 1880), ss. 20, 21, 22—Decision of Survey officer as* ...

decided that defendants were occupancy tenants, but the plaintiffs did not come to know of this decision till 1893, when the botkhat was prepared and signed. Shortly afterwards the plaintiffs took forcible possession of the lands Thereupon the defendants filed a suit in the Mamlatdar's Court to recover possession, alleging that they were owners of the land, and that they had been illegally dispossessed. The Mamlatdar restored them to possession. In 1896 plaintiffs filed the present suit to eject defendants. Defendants pleaded (*inter alia*) that the suit was bad for want ...

16. ——— *Limitation Act (XIV of 1859), s. 1, cl. 7—Order of Mamlatdar's Court as to possession—Bom. Reg V of 1827—Limitation Act (IX of 1871), s 29, (XV of 1877) s 28—Extinction of title—Bar of remedy—Statutes of limitation—Construction of statutes*—In 1864 *A* sued his co-sharer *B* in the Mamlatdar's Court for possession of certain land and obtained a decree. In 1874 *B*

the Mamlatdar's decision as to possession did not

to the said land was not extinguished, and the possession which he obtained in 1874 could properly be referred, and ought to be referred, to his then subsisting title. Consequently, any one who after his re-entry

is one of several such properties, is not material. In the Presidency of Bombay it is only in those cases in which the possession of property has been of such a duration and character as to come within Regulation V of 1827 that the Limitation Act (XIV of 1859) has

17. ——— *Order of Mamlatdar under Bom. Act V of 1864—Act XVI of 1838*—An order of the Court of the Mamlatdar under the last clause

18. ——— *Order of Mamlatdar under Bom. Act V of 1864*—*A* brought a suit in a Mamlatdar's Court, under Bombay Act V of 1864, to recover possession of certain land from *B*. *C* joined in the

pleaded limitation under s 1, cl. 7, Act XIV of

19. ——— *Right of possession claimed by tenant against landlord—Mortgage by landlord—Possessory suit in the Mamlatdar's Court by the tenant against the mortgagor—Decree in favour of the tenant—Assignment of mortgage by mortgagee—Purchase of the equity of redemption by the assignee—Merger—Suit brought by the assignee to recover possession—Assignee bound by Mamlatdar's order against mortgagor—Mamlatdars Act (Bom. Act V of 1864), s 15—Mamlatdars Act*

LIMITATION ACT, 1877—*continued.*

therefore incumbent upon *R* to bring a suit within three years from the Mamlatdar's order, as provided by art. 46, sch. II of the Limitation Act (IX of 1871), and that not having been done, the plaintiff, who derived his title from *R*, could not recover possession from the defendant. BAPU BIN MAHADAJI *v.* MAHADAJI VASUDEO . I. L. R., 18 Bom., 348

20. ———— *Finding by Mamlatdar as to possession—Subsequent contrary finding by Civil Court—Effect of Mamlatdar's order—Limitation*

1880, and awarded her damages against the first defendant (who was held to be her farm servant) for crops which had been taken away by him In 1887, the second defendant as mortgagee from defendant No. 1 obtained a decree against plaintiff in the Mamlatdar's Court awarding him possession of the land, and in execution of that decree the plaintiff was dispossessed in December 1887. In 1890, the plaintiff filed this suit to recover possession and for mesne profits since 1887 The defendant pleaded that the plaintiff had no title to the land, and that the suit was

Court, and as the plaintiff continued in possession,

[I. L. R., 20 Bom., 270

21. ———— *Non-payment of purchase-*

tiffs owned certain land on which the defendant, with the plaintiffs' leave, built a house. Disputes arose between plaintiffs and defendant, and in

to give up the property to the plaintiffs at the end of four months on payment by the plaintiffs of R100 On the 25th November 1890, the plaintiffs brought his suit for possession, alleging that the defendant

LIMITATION ACT, 1877—*continued.*

refused to give up the property. The District Judge dismissed the suit, as barred by limitation, under

The present suit, which was based on the contract of sale, was therefore not barred by art. 47 of the Limitation Act. SAGAJI *v.* NAMDEV

[I. L. R., 23 Bom., 525

22 ———— *Partition suit—Bom. Act V of 1864.*—Art. 46 of sch. II of the Limitation Act IX of 1871 is not applicable to a partition suit. SHIVRAM *v.* NARAYAN . I. L. R., 5 Bom., 27

23 ———— *Partition suit—Bom. Act V of 1864.*—Plaintiff in 1876 filed a suit to establish his right to, and to recover a fourth share of, certain property which he alleged to be ancestral. He

———— **art. 48 (1871, art. 48).**

1. ———— **and art. 36**—*Standing crops—Immoreable property.*—Standing crops are immoveable property within the meaning of the Limitation Act. PANDAH GAZI *v.* JENNUDDI

[I. L. R., 4 Calc., 665; 2 C. L. R., 526

within the meaning of

property. RAJ CHUNDER GHOSE *v.* JOY KISHEN MOOKERJEE . . . . . . 4 W. R., 76

4. ———— *Suit to recover money deposited for a certain purpose*—*R* sued *M* for a certain sum of money on the ground that he had

LIMITATION ACT, 1877—*continued.*

began to run was when *B* first learnt that *M* had retained the money in his possession instead of paying it as directed. RAMESHAR CHAUBEY *v.* MATA BHIKH [I. L. R., 5 All., 341

——— art. 49 (1871, art. 49).

perty" in s. 1, cl. 2. AMRITHAMAL *v.* RANGANADHA PILLAI . . . . . 3 Mad., 165

ANONYMOUS CASE . . W. R., F. B., 126

AHMEDULLAH *v.* HUR CHURN PANDAH [2 W. R., 235

RAMNATH ROY CHOWDRY *v.* HURRI CHUNDER ROY CHOWDHRY . . . 5 W. R., 50

PRAHLAD MAHARUDRA *v.* WATT 10 Bom., 346

and DHUNPUTTY KOER *v.* LLOYD . 17 W. R., 277

2. ——— *Suit to recover ornaments taken with view of borrowing money on them.*— In a suit to recover certain ornaments (or their value)

[14 W. R., 322

3. ——— *Sale of moveable and immoveable property—Refusal to execute conveyance—Suit for possession—"Unlawful possession"*—*A* entered into an agreement with *B* for the purchase of moveable and immoveable property and paid a deposit. Under such an agreement by s. 85 of the

cally to perform his contract and execute a conveyance of the property to himself, *A*. This decree was confirmed on appeal. *B* refusing to execute the conveyance to *A*, the conveyance was executed by the Court under the provisions of s. 202 of Act VIII of 1859, *C* still detaining possession of the moveable and immoveable property in question. *A* brought this suit against him to recover possession of the same. The suit was brought within three years of

LIMITATION ACT, 1877—*continued.*

KRISHNAJI PATEL *v.* RAMCHANDRA BHAGVAT [I. L. R., 5 Bom., 554

4. ——— *Suit for specific moveable property—Suit for a legacy.*—A testator bequeathed certain specific moveable property to *A*. *B* applied for and obtained a certificate under Act XXVII of 1860 on behalf of the testator's widow, and took possession of the property bequeathed. *A* appealed and the case was remanded for re-trial. On the 27th of March 1873, the former order was cancelled and a certificate was granted to *A*. On the 19th of August 1873, *B* was directed to deliver up the property to *C*, who had purchased it from *A*. On the 22nd of March 1878, *C* instituted a suit to recover the property. *Held* that the suit was barred under art. 49 of the Limitation Act. Art. 123 of the Limitation Act only applies to cases in which the property sought to be recovered is not only a legacy, but is also sought to be recovered as such from a person who is bound by law to pay such legacy, either because he is the executor of the will or otherwise represents the estate of the testator. ISSUR CHUNDER DOSS *v.* JUGGUT CHUNDER SHAHA [I. L. R., 9 Calc., 79

5. ——— *Cause of action—Suit by Mahomedan lady to recover property from husband after divorce.*—In a suit by a Mahomedan lady against her husband after divorce for recovery of property belonging to her which her husband held before divorce, the cause of action to the wife arose at the time of the separation. ABDOOL ALI *alias* SHOAGEEA *v.* KURRUMNISSA . 9 W. R., 153

6. ——— *Suit for compensation for attachment before judgment—Limitation Act, sch. II, art. 36—Suit for damages.*—In a suit by *A* against *B*, the property of *B* was attached before judgment in November 1888. The suit was dismissed in October 1889, and an appeal by the plaintiff was dismissed in July 1890. *B* now sued *A* in September 1892 for damages occasioned by the attachment before judgment. *Held* that art. 49 was applicable, and the cause of action having arisen in 1888, the suit was barred. If the two years' limitation provided by art. 36 was applicable, as for a tort, the suit was still barred by limitation. MANAVIKRAMAN *v.* AVISILAN KOYA [I. L. R., 19 Mad., 80

7. ——— *Suit for damage to property*

LIMITATION ACT, 1877—*continued.*

8. ———— and art. 36—*Suit for*

of sale contained in the mortgage and gave possession to the purchaser. On the 2nd September 1887, plaintiff sued the defendants to recover the value of

that plaintiff was entitled to recover from the defendants the value of the timber; and (2) that the suit was not barred, art. 49 and not art. 36 of sch. II of Limitation Act being applicable to it. PASSANHA *v.* MADRAS DEPOSIT AND BENEFIT SOCIETY [I. L. R., 11 Mad., 333

9. ———— and art. 116—*Suit to recover title-deeds left with a mortgagee after redemption—Demand and refusal—Cause of action.*—After the redemption of a mortgage, the title-deeds of the mortgage premises were left with the mortgagee, who refused to return them on demand made by the mortgagor. The mortgagor now sued to recover possession of them. *Held* the Limitation Act, sch. II, art. 49, was applicable to the case, and that time began to run from the date of the mortgagee's refusal SUBBAKKA *v.* MARUPPAKKALA [I. L. R., 15 Mad., 157

10. ———— *Suit for damages for cutting and carrying away crops—Act XV of 1877, sch. II, arts. 36, 39, 49, and 109.*—In a suit for

severance was a wrongful act does not make any

art. 39. *Per* GHOSE, *J.*—Art. 49 applied to this case. *Surat Lal Mondal* v. *Umar Haji, I. L. R., 22 Calc., 877,* followed. *Per* RAMPINI, *J.* (*dissentiente*).—The suit as framed not being one for compensation for trespass, art. 39 does not apply. Art. 48

disregarded. Art. 109 also does not apply, as it referred to a case in which possession of immoveable property was withheld. Art. 36 therefore applied to the case *Essoo Bhayaji* v. *Steamship "Savitri," I. L. R., 11 Bom., 133,* referred to.

LIMITATION ACT, 1877—*continued.*

Pandah Gazi v. *Jennudi, I. L. R., 4 Calc., 665,* dissented from by TREVELYAN, *J.* MANGUN JHA *v.* DOLHIN GOLAB KOER . I. L. R., 25 Calc., 692 [2 C. W. N., 265

11. ———— *Claim to recover goods in*

lowed, plaintiff filed in the City Civil Court, Madras,

had become purchasers thereof. On plaintiff, in December 1897, suing "for the recovery of the goods or their value as compensation,"—*Held* that the suit, being framed for the recovery of specific moveable

The suits
governed by
and *this art*
decided on that clause.

See BOIDONATH SHAH *v.* LAHENISSA BIBEE [7 W. R., 164

TRIPP *v.* KUBEER MUNDUL . 9 W. R., 203

———— art. 52 (1871, art. 51).

1. ———— *Act XIV of 1859, s. 1, cl. 8*

years' limitation applied to a sale of goods wholesale; three years being finally held to be the proper period. LAL MOHUN HOLDAR *v.* MAHADEB KATEE [B. L. R., Sup. Vol., 909 9 W. R., 193

CHUNDEE CHURN PAUL *v.* RAMNARAIN SEN [Cor., 8

2. ———— *Act XIV of 1859, s. 1,*

LALL PAUL *v.* CHEINEBASH DUTT [3 W. R., S. C. C. Ref., 24

GOPAL CHUNDER SHAHA *v.* SINAES . 8 W. R., 4.

Cases of articles sold by retail are—

BULDEO DOSS JOHURRY *v.* SREENAUTH SEIN [1 Ind. Jur., O. S., 114

LIMITATION ACT, 1877—*continued.*

SHAMA CHURN LALL *v.* COLLECTOR OF TIRHOOT [1 W. R., 308

BUCHA GOPE *v.* COLLECTOR OF TIRHOOT [7 W. R., 102

There is no distinction made in the present Act between sales by wholesale and sales by retail

3. ———— *Goods supplied on credit and payments made on account from time to time.*—When a tradesman supplies goods from time to time on credit to a customer who makes payments from time to time on account, no fixed period of credit being agreed upon, the cause of action for purpose of limitation must be taken to arise on the date when each item claimed was supplied. SATCOWREE SINGH *v.* KRISTO BANGAL . . . 11 W. R., 529

4. ———— *Suit on contract for the supply of pictures at various times subject to approval of each picture.*—Where the plaintiff, a native artist, agreed to supply, and the defendant agreed to

———— art. 53 (1871, art. 52)

This article follows the case of SATCOWREE SINGH *v.* KRISTO BANGAL . . . 11 W. R., 529

———— and art. 52—*Suit for price of wood supplied under contract.*—A suit was brought

[I. L. R., 1 All., 284

———— art. 56 (1871, art. 55)

1. ———— *Suit for work and labour done—Cause of action*—Where no law, special custom, or agreement is shown, making the remuneration on a joint contract for labour to be done

LIMITATION ACT, 1877—*continued.*

payable in advance, the cause of action accrues from the time when the labour was performed. PERLADH SEN *v.* RUNJEET ROY . . W. R., 1864, 68

2. ———— *Suit to recover sums expended by zamindar for irrigation*—In a suit to recover sums expended by the zamindar at the defen-

1. ———— art. 57—*Suit for money lent—Limitation for a suit to recover debt personally from the mortgagor where mortgage-deed contains no personal undertaking for repayment.*—By a

to the defendant on repayment of the debt. But no personal undertaking to pay was given by the defendant. The land was sold by the revenue authorities for arrears of assessment due from the defendant for certain other lands of the defendant. The plaintiff now sought to recover the debt personally from the defendant. The Court of first instance dismissed the plaintiff's claim, on the ground

[I. L. R., 11 Bom., 475

2 ———— and art. 120—*Suit on pledge of moveable property—Prayers in plaint both for personal decree and for right to enforce*

within art. 120 of the same schedule, and was therefore not barred. NIM CHAND BABOO *v.* JAGABUNDHU GHOSE . . . I. L. R., 22 Calc., 21

LIMITATION ACT, 1877—*continued.*

3. ———— and art. 120—*Loan on security of moveable property—Suit to recover money by sale of property pledged and also from the defendant personally.*—Where a plaintiff who had lent money on the security of moveable property sued to recover the money both by sale of the property pledged, and also asked for a decree personally against the defendant, should the amount realized by the sale prove insufficient, it was held that, so far as the plaint

Jagabundhu Ghose, I. L. R., 22 Calc., 21, followed. MADAN MOHAN LAL *v.* KANHAI LAL [I. L. R., 17 All., 284

———— art. 59 (1871, art. 58).

See DEKKAN AGRICULTURISTS' ACT, 1879, s. 72 . . I. L. R., 5 Bom., 647

Under Act XIV of 1859, cases of money lent or deposited to be repaid on demand were governed by cl. 9 or cl. 16 of s. 1 of that Act, and the decision as to whether the cause of action arose at the date of the loan or from the date of the demand were conflicting.

See BRAMHAMAYI DASI *v.* ABHAI CHARAN CHOWDHRY . . 7 B. L. R., 489 : 16 W. R., 164

POORNO CHUNDER DUTT *v.* GOPAL CHUNDER DOSS . . . 17 W. R., 87

TARINI PRASAD GHOSE *v.* RAM KRISHNA BANERJEE [6 B. L. R., 160 : 14 W. R., 224

NASIR BIN ABDUL HABIB FAZAL *v.* DAYABHAI ITCHACHAND . . . . 10 Bom., 300

JAFFREE BEGUM *v.* MAHOMED ZAHOOR AHSUN KHAN . . . . . 2 N. W., 409

HEERUN *v.* MARIUN . . . 14 W. R., 87

deciding that it arose on demand.

And PARBATI CHARAN MOOKERJEE *v.* RAMNARAYAN MATILAL [5 B. L. R., 396 : 16 W. R., 164 note

ABDUL ALI *v.* TARACHAND GHOSE [6 B. L. R., 292

S. C. on appeal TARACHAND GHOSE *v.* ABDUL ALI . . 8 B. L. R., 24 : 16 W. R., O. C., 1

HINGUN LALL *v.* DEBEE PERSHAD 24 W. R., 42

deciding that it arose on the date of the loan or deposit

Under art. 58 of the Act of 1871, the cause of

1. ———— and arts. 60 and 132—*Claim aga*
—Suit fo
1874, *A*,
factory X

LIMITATION ACT, 1877—*continued.*

advanced, died on the 7th September 1874, leaving a

advances, and *B* mortgaged factory X as a further security, the mortgage containing a stipulation for repayment, within one month after notice, of the balance due in excess of R12,000. *B* became insolvent in July 1882. No demand was made. On the 5th January 1877, a balance of R27,562 remained due which with interest up to July 1882 was increased to R42,564. The liquidators of *S & Co*, who had in the meantime dissolved partnership, sought to prove against *B's* estate for R30,564 after deducting the R12,000 advanced to *A*. *Held* that the claim to prove against the estate was in the nature of a suit, not to enforce payment of money charged on immoveable property under art. 132, Act XV of 1877, nor was it within art. 60, but it was a suit for money, and was governed by art. 59 of the Act. IN THE MATTER OF AGABEG . . 12 C. L. R., 165

2. ———— *Native banker and customer —Deposit—Loan—Suit to recover money lodged with a native banker more than three years after lodgment.*—The relationship between a native banker and the person depositing money with him in the ordinary way of business is that of borrower and lender, and the money lodged can be recovered as money lent. Art. 59 of the Limitation Act (XV of 1877) applies to such a transaction. The plaintiffs, who were members of the Dalvádi community, sued in 1883 to recover from the defendants the sum

tion that it was to be returned with interest on demand. It appeared that small sums were paid by *K* to the plaintiffs from time to time, and no demand had ever been made during the lifetime of *K* for repayment. The defendants denied the alleged condi-

Appellate Court, that the plaintiffs' suit was by art. 59 of the Limitation Act (XV of 1877). The

upon the following circumstances as showing

LIMITATION ACT, 1877—*continued.*

the parties (which is essential to a deposit in its technical sense), and thus distinguishing it from the ordinary dealings between native bankers and their customers. ICHHA DHANJI *v.* NATHA

[I. L. R., 13 Bom., 338

——— art. 60.

See the Note and the cases referred to under article 59.

This article (60) is not in accordance with the cases of PARBATI CHARAN MOOKERJEE *v.* RAMNARAYAN MATILAL

[5 B. L. R., 396: 16 W. R., 164 note

and HINGUN LAL *v.* DEBEE PERSHAD

[24 W. R., 42

which were decided under Act XIV of 1859

1. ——— *Cause of action—Deposit—Demand.*—Where money has been deposited by *A* at interest with *B*, repayable on demand, and interest is paid accordingly, the cause of action arises not on the date of the deposit, but on the date of demand. TARINI PRASAD GHOSE *v.* RAM KRISHNA BANERJEE

[6 B. L. R., 160: 14 W. R., 224

2. ——— *Banker and customer—Principal and agent—Cause of action—Demand.*—*A* deposited certain moneys with *B*, a banker, and drew against them, but not to the full extent, the residue was employed on *A*'s account by *B* according to an agreement between them. *Held* that, besides the ordinary relation of banker and customer, there subsisted also between them that of principal and agent, that therefore the right of action arose at the time of demand NASIR BIN ABDUL HABIB FAZAL *v.* DAYABHAI ITCHACHAND

[10 Bom., 300

3. ——— *Money deposited—Demand—Cause of action.*—Where a mortgagor allows the amount of his loan to remain in the hands of the mortgagee, taking a receipt for it,—*Held* that the

the balance of such moneys is in the nature of a suit to recover the amount of deposit JAFFREE BEGUM *v.* MAHOMED ZAHOOR AHSUN KHAN

[2 N. W., 409

4. ——— *Cause of action—Demand.*—Plaintiff, having received from her brothers a sum as an equivalent for her share in her father's estate, made over the money to one of the brothers (*E*), to be invested in the common stock for the purposes

and profits *Held* that plaintiff's cause of action arose when she made her demand for the money after the arbitration award, and that limitation would run from no earlier date. HEERUN *v.* MARIUN

[14 W. R., 87

5. ——— *Deposit—Loan repayable*

a trust can be implied. RAM SUKH BHUNJO *v.* BROHMOYI DASI . . . 6 C. L. R., 470

6. ——— *Money deposited—Banker and customer—Money lent—"Deposit"—"Trust"—Cause of action—Demand.*—The plaintiff deposited from time to time with the firm of the defendant, who carried on a banking business, various sums of money, the amounts deposited bearing interest, and at times certain sums being withdrawn by the plaintiff, and an account of the balance of principal and interest being struck at the end of each year and presented to the plaintiff The date of the first deposit was not known, but it was some time previous to 1282 (1875) A demand was made for the whole amount of the principal and interest in Bhadro 1292

the date of the demand, and the suit was not barred. The dictum of WHITE, *J.*, in the case of *Ram Sukh Bhunjo* v. *Brohmoyi Dasi, 6 C. L. R., 470*, that the "word 'deposit' in the Limitation Act as distinct from 'loan' points to cases where money is lodged with another under an express trust or under circumstances from which a trust may be implied," dissented from ISHUR CHUNDER BHADURI *v.* JIBUN KUMARI BIBI . I. L R, 16 Calc., 25

7. ——— and art. 59—*Money deposited—Banker and customer—Money lent—Deposit—Cause of action—Demand.*—*A* at the suggestion of *B*, a shopkeeper, deposited with him certain sums of money on the terms that the money should be repaid with interest on demand. It appeared

the suit was governed by the Limitation Act, sch. II, art. 60, and not by art 59, and accordingly was not barred by limitation PERUNDEVITAYAR AMMAL *v.* NAMMALVAR CHETTI

[I. L. R., 18 Mad., 390

8. ——— *Deposit—Loan—Demand.*

was credited in the books of the defendant's firm

LIMITATION ACT, 1877—*continued.*

in the name of her son, the plaintiff. A further sum was similarly paid over by her in December 1871, and at her request was credited to the same

year in the firm's books, the interest being added each year, but no payment had ever been made to the plaintiff, or on his behalf, out of the sum so standing to his credit. Compound interest had been allowed in the account, and, on the 9th November 1893, the amount standing to the credit of the plaintiff was R4,917. The plaintiff contended that the money had been paid to, and accepted by, the defendant as a deposit to be held in trust for him. The defendant alleged that the money in question had been lent to him by the plaintiff's mother, and contended that the plaintiff's claim was barred by limitation. *Held* that the plaintiff's claim was not barred. The defendant stood in a fiduciary position to the plaintiff, and therefore there was a deposit within the meaning of art. 60 of the Limitation Act (XV of 1877), and limitation did not commence to run until demand. DORABJI JEHANGIR RANDIVA *v.* MUNCHERJI BOMANJI PANTHAKI [I. L. R., 19 Bom., 352

Held in the same case on appeal, affirming the decision of the Court below, that the defendant had held the money not as a loan, but as a deposit; that art. 60 of the sch. II of the Limitation Act (XV of 1877) applied, and that the plaintiff's claim was not barred. MUNCHERJI BOMANJI PANTHAKI *v.* DORABJI JEHANGIR RANDIVA [I. L. R., 19 Bom., 775

———— art. 61 (1871, art. 59).

1. ———— *Money paid at defendant's request—Hindu family—Debts of manager.*—In the year 1867 the plaintiff, who was then living jointly with the defendant, who was his brother,

for the defendant must have been before 1870, and that therefore the suit was barred by limitation under Act IX of 1871, sch. II, art. 59. *Ramkristo Roy v. Muddun Gopal Roy, 12 W. R., 194,* followed. SUNKUR PERSHAD *v.* GOURY PERSHAD [I. L. R., 5 Calc., 321

2. ———— *Suit to recover balance of payments made on behalf of defendant—Appropriation of payments.*—In a suit to recover a balance with reference to payments made by plaintiff on account of defendant, where no mutual account or reciprocal demands existed,—*Held* that plaintiff could not recover any items due more than three years prior to the date on which the suit was instituted, but that he was entitled to apply all payments, even those subsequently made, in reduction of so much of his claim as was barred. THAKOOR PERSHAD SINGH *v.* MOHESH LALL . . . 24 W. R., 390

3. ———— *Suit for money payable to the plaintiff for money paid for the defendant—Suit for account—Limitation Act, sch. II, art. 120.*—Under an award two persons were made liable each for the payment of a moiety of the expenses of certain

to pay under the award. *Held* that the suit was governed by art. 61 of the second schedule to the Indian Limitation Act, 1877, and that, although the taking of accounts might be necessary, the suit was not a suit for an account to which art. 120 of the same schedule might apply. *Rohan v. Jwala Prasad, I. L. R., 16 All., 333,* referred to. RAMAN LALJI MAHARAJ *v.* GOPAL LALJI MAHARAJ [I. L. R., 19 All., 244

———— art. 62 (1871, art. 60).

Cases now provided for by this article were formerly held to be governed by the general period of limitation for suits not otherwise provided for, which period was six years under cl. 16 of s. 1 of the Act of 1859.

It was so held in the case of a servant to whom money had been entrusted for a particular purpose, and who did not make the payment he was directed to make. AMJUD ALI *v.* ALI BUKSH 2 W. R., 122

AHMEDOOLLAH *v.* HUR CHURN PANDAH [2 W. R., 235

1. ———— *Suit for recovery of salary—Money had and received.*—The defendant, who was a batwara ameen employed by the Collector, drew from the public treasury at Backergunge a sum of

HARO CHANDRA DAS BANIK 4 B. L. R., Ap., 68

S. C. OBHOY CHURN DUTT *v.* HURO CHUNDER DOSS BUXEE . . . 13 W. R., 150

2. ———— *Suit for share of money had and received.*—*A*, *B*, and *C* being joint creditors of *D*, *A* and *B* received in 1856 a payment on account in respect of their share in the debt. *D* having made default in payment of the balance, separate suits were brought against him by *A*, *B*, and *C*. The Court having held that the payment was a payment to all, *A* and *B* recovered more than

LIMITATION ACT, 1877—*continued.*

their share, and *C* recovered less. A family suit for partition between *A*, *B*, and *C* was in 1862 compromised, and it was agreed that all claims between

[illegible]

1856. *Held* that he was entitled to recover the amount which *A* and *B* had recovered against *D* in excess of their claim, and that the suit was not barred by the law of limitation. LUTF ALI KHAN *v.* AFZALUNISSA BEGUM . . 9 B. L. R., 348 [16 W. R., P. C., 20

reversing case in LOTF ALI KHAN *v.* AFZULOONISSA BEGUM . . . . . . 3 W. R., 113

3. ———— *Suit for money had and received by one of joint decree-holders.*—A decree obtained by *A* and *B* was transferred by *B* to *C* without the knowledge of *A*. *C* executed the decree, and *A* subsequently sued *C* for his share of the proceeds. *Held* that, if *A* had any cause of action against *C*, it would be for money had and received to *A*'s use; and the suit would be governed, as to limitation, by Act IX of 1871, sch. II, cl. 60. But *held* *A* had no cause of action against *C*, but only against *B*. WEBOR ALI *v.* GADDAI BEHARI [2 C. L. R., 165

4. ———— *Suit to recover money obtained by collusion and fraud.*—A suit for the recovery of money obtained by fraud and collusion is a suit for money received by a defendant for the plaintiff's use, and therefore, under art. 60 of the second schedule of Act IX of 1871, is barred unless brought within three years of the date when the money was received. RAGHUMONI AUDHICARY *v.* NILMONI SINGH DEO . . . I. L. R., 2 Calc., 393

5. ———— and art. 147—*Suit for over-payments under agreement—Deposit.*—Where there was a contract between plaintiff and defendant that defendant should purchase a dwelling-house benami on account of plaintiff, and reconvey it to plaintiff on his paying up in instalments a certain sum of money with interest, and plaintiff, seven years after his last payment, sued to recover some payments

[illegible]

CHURN MOOKERJEE . . 25 W. R., 415

6. ———— and art. 118—*Suit for money received by defendant to plaintiff's use.*—

[illegible]

decree held by *B*, dated the 19th August 1871, which directed the sale of the property in satisfaction of a charge declared thereby. The property was sold in

[illegible]

versed the Munsif's order. *A* then obtained an order from the Munsif directing *B* to refund the money, which he did, and it was paid to *A*. *B* sued *A* to

[illegible]

that the suit was one for money received by the defendant for the plaintiff's use, and was therefore governed by cl. 60, sch. II of the Limitation Act. *Per* STUART, *C.J.*, and SPANKIE, *J.*—That the suit was not such a suit, but was one for which no period of limitation was provided elsewhere than in cl. 118 of the schedule, and that it was governed by that clause. RAMKISHAN *v.* BHAWANI DAS [I. L. R., 1 All., 333

7. ———— [illegible]

[illegible]

suit was not one for damages, but for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use, to which the period of limitation applicable was three years. BHAWANI KUAR *v.* RIKHI RAM [I. L. R., 2 All., 354

See also RAMKISHEN *v.* BHAWANI [I. L. R., 1 All., 333

8. ———— and art. 120—*Suit for* [illegible]

[illegible]

received by the defendant for the plaintiff's use, to which the [illegible]
Act XV [illegible]
limitation [illegible]
LAL *v.* BA [illegible]

9. ———— *Failure of consideration—Suit for money had and received for the plaintiff's use—Debt.*—Prior to September 1879, pecuniary

[illegible]

liquidated, and on the 1st September 1879 it was arranged that *D* should execute a sale-deed conveying to *B* certain immoveable property for R55,000, and that *B* should pay this amount by giving *D* credit to the extent of the debt, and paying the balance in cash. In August 1880, *D* sued *B* for specific performance of the contract, which, he alleged,

LIMITATION ACT, 1877—*continued.*

had been settled and executed for the sale of the

that, as they had been omitted from the document executed by *D* on the 1st September 1879, he had

that, under the terms of the arrangement made on the 1st September 1879, the debt of R33,000 then

of the decree of the High Court on 14th March 1884, dismissing the suit for specific performance. *Held* that this contention must fail, and the debt must be

set up by the plaintiff was alleged to have been completed, was the latest possible date upon which

10. ——— *Money paid—Money had and received—Goods paid for before delivery—Short delivery—Failure of consideration—*Money

KRISTO BOSE *v.* LYON & CO. [I. L. R., 14 Calc., 457

11. ——— *Suit to recover purchase-money—*

Accrual

tion whic

the us

money

LIMITATION ACT, 1877—*continued.*

Limitation Act. *A* purchased a share of joint property from a member of a Mitakshara family but

12. ——— *Act XI of 1859, s. 31—Suit to recover surplus sale-proceeds of a sale for arrears of Government revenue.*—Where *A* instituted a suit in November 1889 to recover from the

See SECRETARY OF STATE FOR INDIA *v.* GURU PROSHAD DHUR . I. L. R., 20 Calc., 51

13. ——— and arts. 97, 120—*Suit for money paid by a pre-emptor under a decree for pre-emption which has become void—Suit for money had and received for plaintiff's use—Suit for money paid upon an existing consideration*

them for the

of R1,595 which he had paid to them in August 1880. In December 1883, *K* sued the judgment-debtors for recovery of the R1,595 with interest. *Held* that art 62 of the Limitation Act did not govern the suit, but that art. 97, and, if not, art. 120, would apply, and the suit was therefore not barred by limitation. KOJI RAM *v.* ISHAR DAS [I. L. R., 8 All., 273

14. ——— and art. 132—*Suit to* —The parties,

LIMITATION ACT, 1877—*continued.*

father as the officiating desai, the suit was rejected under Act XI of 1843. In 1866 an arrangement was come to under which a sum of R40-2 was to be annually available over and above the remuneration of the officiator. On the 9th July 1867, the defendant received this sum for the first time. In 1873 a new arrangement was effected, under which the service

his right to a share of the moiety of the amin sukhdi allowance given to the desais by the Government, and to recover his share of the amount received by the defendant. *Held* that the plaintiff's cause of action in this suit arose on the day when the

MANEKLAL AMBATLAL *v.* DESAI SHIVLAL BHOGILAL [I. L. R., 8 Bom., 426

15. ——————— *Suit by sharer of hak against another sharer—Desaigiri allowance.*—A suit by one sharer in a vatan against another sharer or alleged sharer who has improperly received the plaintiff's share of the "hak" is a suit for money received by the defendant for the plaintiff's use, and the period of limitation is three years as prescribed by art. 60 of the Limitation Act, 1871. HARMUKHGAURI *v.* HARISUKHPRASAD I. L. R., 7 Bom., 191

16. ——————— *Suit to recover arrears—Suit for money had and received—Deshpande vatan—Suit by one sharer against other.*—Where a person, having previously obtained a decree declaratory of his title, sues his co-sharer in a deshpande vatan, who is bound by the decree to recover arrears, his suit is a suit for money had and received by the defendant to the plaintiff's use, and the period of limitation is three years as prescribed by art. 62, sch. II of Act

17. ——————— *Practice—Procedure—Vatan—Cash allowance—Suit for arrears of share*—The plaintiff in this suit sought to recover eleven years' arrears of his share in a certain Government allowance received by the defendants and also prayed for an order directing the defendants to pay him and his heirs his proper share in future. The defendants contended that under the Limitation Act (XV of 1877) only three years' arrears could be

LIMITATION ACT, 1877—*continued.*

Act (XV of 1877) was only entitled to recover arrears for three years. CHAMANLAL *v.* BAPUBHAI [I. L. R., 22 Bom., 669

18. ——————— *Money received—Trust*

19. ——————— *Separation in joint Hindu family—Suit for share in joint property—Limitation Act, sch. II, art. 127.*—At the separation of members of a joint family governed by the Benares school of Hindu law in 1885, the unrealized debts

referred to BANOO TEWARY *v.* DOONA TEWARY [I. L. R., 24 Calc., 309

20 ——————— and art. 127—*Joint Hindu family—Separation—Joint property*—After the separation of *P* and *T*, two members of a joint Hindu family, certain bonds continued to be held by them jointly. Four years after the separation, *P* obtained a decree in respect of one of these bonds (which had been obtained in his name alone), and realized the amount decreed in the same year. Eight years afterwards, *T* brought a suit against *P* claiming to be entitled to a share in the money realized. *Held* that art 62, and not art 127, of sch II of the Limitation Act was applicable to the suit. THAKUR PRASAD *v.* PARTAB I. L. R., 6 All., 442

21 ——————— and art 109—*Suit for money received by defendant to plaintiff's use—Vatandars Act, III of 1874, s 8.*—Under s. 8

LIMITATION ACT, 1877—*continued.*

of the Vatandars (Bombay) Act, III of 1874, the Collector passed an order that a contribution should be paid by the holders of a part of the shetsandi vatan towards the annual emolument of the office-holder. As payment was not made, he caused the defaulters' moveable property to be sold on the 18th

Revenue Commissioner's order. *Held* that the suit was one for money had and received by the defendant to the plaintiff's use, and as such governed by art 62 of sch II of the Limitation Act (XV of 1877). LADJI NAIK *v.* MUSABI

[I. L. R., 10 Bom., 665

22 ———— *Suit by deshmukh for deductions by Collector from watan.*—Where a Collector in the year 1854 employed certain karkuns

so deducted from his watan, as money received by the defendant to the use of the plaintiffs and not as an interest in immoveable property; that his cause of action was not barred in 1870, for that a new cause of action in respect of such deductions accrued each year in which the deduction was made, and that six years' arrears of such deduction could be recovered under s. 1, cl. 16, of Act XIV of 1859. RANGOBA NAIK *v.* COLLECTOR OF RATNAGIRI . 8 Bom., A. C., 107

23. ———— and art. 132—*Suit for money value of fixed quantities of grain payable by tenant to landlord—Nature of such claim for purposes of limitation—Suit to enforce payment of money charged on land—Immoveable property—Nibandha—Money value of goods.*—An inamdar, in a suit against his tenant, established his right to the money value of a fixed quantity of grain to be

to the intended recipient. The interest or jural relation of right of such recipient was nibandha, but the particular sum due to him was either money received to his use, or payable on a contract, and money which would remain due, though the grant constituting the nibandha were cancelled and had ceased to exist after the realization of the money. It being thus distinguishable from the original right which produced it, the claim in this suit was barred by limitation after three years. Money value means the market value, ... sell, not a ... MORBHAT

[I. L. R., 6 Bom., 234

the happening of the event. JOHURI MAHTON *v.* THAKOOR NATH LUKEE

[I. L. R., 5 Calc., 830 : 6 C. L. R., 355

———— art. 63 (1871, art. 61; 1859, s. 1, cl. 9).

———— *Suit for interest—Suit for money payable on demand—Suit for money deposited payable on demand.*—The plaintiff in this suit deposited certain money with the defendants,

plaintiff brought the present suit against the defendants in which she claimed the sum representing the difference between such interest calculated at *four per cent.* and six per cent., alleging that her cause of ... 14th February 1876. *Held* that

interest for money due, to which cl. ..., s. ... of Act XIV of 1859, art 61, sch. II of Act IX of 1871, and art 63, sch. II of Act XV of 1877, had successively applied, and the suit was barred by limitation. MAKUNDI KUAR *v.* BALKISHEN DAS

[I. L. R., 3 All., 328

———— art. 64 (1871, art. 62).

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS. . 13 C. L. R., 112

LIMITATION ACT, 1877—*continued.*

1. ———— *Account stated, Signature to.*—An account stated, within the meaning of art 62, sch II of Act IX of 1871, need not be signed by the debtor. TARINEY CHURN NUNDY v. ABDUR ROHOMAN . . 2 C. L. R., 346

2. ———— *Account stated—Simultaneous verbal agreement—Simultaneous written agreement.*—A simultaneous verbal agreement cannot extend the ordinary period of limitation for a suit on an account stated. An agreement to extend the period must be in writing and signed by the defendant or his agent. DAGDUSA v. SHAMAD [I. L. R., 8 Bom., 542

3. ———— *Suit on account stated—*

4. ———— *Suit on accounts stated orally or in writing.*—The period of limitation for suits on accounts stated is the same, whether the accounts are stated verbally or in writing, and is governed by Act XV of 1877, sch. II, cl 64 AKBAR v. KHAN [I. L. R., 7 Calc., 256: 8 C. L. R., 533

Under Act XIV of 1859, it was held that, unless the original right had been kept alive by a written acknowledgment, or the transaction of adjustment

5. ———— *Verbal admission of correctness of account.*—A mere verbal admission of the correctness of an account, the items of which were barred by the Act, was not sufficient to create a new starting-point SUBBARAMA v EASTULU MUTTUSAMI . . . . 3 Mad., 378

6. ———— *Signing and adjustment of account.—Semble*—That the adjustment and signing of an account by the defendant was held to be a sufficient contract in writing to satisfy the requirements of cl 9 of s. 1 of the Act of 1859 UMEDCHAND HUKAMCHAND v. BULAKIDAS LALCHAND . . . . 5 Bom., O. C., 16

See BROOKE v GIBBON . 19 W. R., 244

7. ———— *Settlement of accounts—Admission of balance—New contract.*—Where a

CHOWDHRY . . . . 24 W. R., 440

BENARSEE DOSS v. KHOOSHAL CHUND KHOOSHAL CHUND v. PALMER . 2 Agra, Pt. II, 170

LIMITATION ACT, 1877—*continued.*

8. ———— *Suit for balance of account on allegation of account stated—Fresh contract to pay.*—To render an agreement, come to orally for

MUDDAPPA . . . . . 6 Mad., 197

See RAMKRISTO PAUL CHOWDHRY v. HURRY DASS KOONDOO . . Marsh., 219: 1 Hay, 569

MARIMUTHU v. SAMINATHA PILLAI [I L R., 21 Mad., 366

9. ———— *Account settled and balance struck—New contract.*—Where an endorsement on a bond showed that an account was made up, a balance struck, and that it was agreed to be paid at a future day with interest,—*Held*, in a suit for the amount

10. ———— *Adjustment of accounts—Demand.*—In order that an unsigned adjustment and settlement of accounts may operate to give a fresh ... mmences to ... striking of ... new consideration for the promise on the part of the person against whom the balance is found to pay the balance so settled *Mulchand Gulabchand* v. *Girdhar Madhab, 8 Bom., A. C., 6,* followed HARGOPAL PREMSUKHDAS v ABDUL KHAN HAJI MUHAMMAD [9 Bom., 429

In the case there followed it was held that, where there had been a running account between the plaintiff and the defendant consisting of advances made by the former, and part payments by the latter, the plaintiff was entitled to recover only in respect of advances made by him within three years preceding the institution of his suit, but he had a right to appropriate any payments made within that time to the reduction of the general balance, even though the recovery of such balance was barred by time. MULCHAND GULABCHAND v GIRDHAR MADHAV [8 Bom., A. C., 6

11. ———— *Account stated—Signed balance of account—Acknowledgment.*—A sum of money was deposited with the defendant's firm in 1857 Three years afterwards interest was paid by the firm, which was debited in the ledger to the

the account was again balanced, and the balance again transferred to a fresh account similarly signed. *Held* that the transaction did not amount to an account stated within the meaning of art. 62, sch II of Act

LIMITATION ACT, 1877—*continued.*

IX of 1871, or art 64 of sch. II of Act XV of 1877,

1877, is where several items of claim are brought into account on either side, and being set against one another, a balance is struck, and the consideration

[I. L. R., 7 Bom., 414

12. ———— *Account stated—Acknowledgment of debt.*—The striking of a balance in an account the items of which are all on one side does not amount to an "account stated" in the proper sense of the term. Hence the signature of the debtor

period of limitation in favour of the creditor *Nahanibai* v. *Nathu Bhau, I. L. R., 7 Bom., 414,* followed. JAMUN v. NAND LAL . . I. L. R., 15 All., 1

13. ———— and s. 19—*Account settled, but not signed—Oral promise by debtor to pay balance—Commencement of limitation.*—The plaintiff and the defendant, who was his agent, examined the account between them on 13th July 1887 and a balance was found due by defendant, who orally promised to pay it in one month. The account was not signed. The plaintiff sued on 10th July 1890

[I. L. R., 13 Mad., 350

14. ———— *Khata, Suit on a—Limitation—Acknowledgment—Construction.*—A khata consisting of one item only on the debit side, and bearing the mark of the debtor, held to be a mere acknowledgment, and not an account stated TRIBHOVAN GANGARAM v AMINA

[I. L. R., 9 Bom., 516

15. ———— *Suit for money on account stated.*—On the 9th October 1875, the book containing the accounts between the plaintiff and the defendant, kept by the plaintiff, was examined by the parties, and a balance was struck in the plaintiff's favour, which was orally approved and admitted by the defendant. On the 2nd April 1877 the plaintiff

LIMITATION ACT, 1877—*continued.*

16. ———— *Suit for money due on accounts stated—"Title" acquired under Act IX of 1871—Suit for money lent.*—The plaintiff sued the defendant for money due upon accounts stated between them in December 1874, when Act IX of 1871 was in force. Such accounts were not signed

benefit of art. 64 of sch. II of the latter Act, but must be regarded as suing merely for money lent. THAKURYAL v. SHEO SINGH RAI

[I. L. R., 2 All., 872

17. ———— *Statement of account unsigned—Cause of action.*—The plaintiffs claimed on a statement of account in writing, dated the 18th October 1877; this statement of account was not

transaction which took place on that date did not constitute an implied contract, and that therefore these contentions were not open to the plaintiffs, but the Court referred the question whether the plaintiffs' claim, so far as it was based on the statement of account on the 18th October 1877, fell within art. 64 of sch. II of Act XV of 1877. *Held* by MITTER, PRINSEP, and MCDONELL, *JJ.*—That the

the statement of account not being signed by the defendant did not fall within the terms of art. 64 of sch. II of Act XV of 1877. *Held* by GARTH, *C.J.*, and TOTTENHAM, *J.*—That the Division Bench, having held that the transaction afforded no basis for a suit, had disposed of the case, and the question referred was therefore immaterial. DUKHI SAHU v. MAHOMED BIKHU

[I. L. R., 10 Calc., 284 : 13 C. L. R., 445

18. ———— *Account stated—Agreement to pay debt by instalments—Suit for whole*

LIMITATION ACT, 1877—*continued.*

registered. *B* failed to pay the first instalment,

KOOER . . . I. L. R., 8 Calc., 912

19. ——— *Account stated—Evidence of existing debt—Fresh Contract Law in India—English law—Acknowledgment of debt—Limit-*

20. ——— *Suit on adjustment of account between landlord and tenant on default in payment of rent—Beng. Act VIII of 1869.*—Where,

[24 W. R., 216

21. ——— *Suit on account stated by guardian as agent of minor.*—A suit on an account stated against a minor cannot succeed unless it be shown that the act of the guardian acting as agent in the matter of the settlement of account is beneficial to the interests of the minor. AZUDDIN HOSSEIN *v.* LLOYD . . . . . 13 C. L. R., 112

——— art. 65 (1871, art. 63)—*Surety on bond undertaking to pay "eventually"*—*A* verbally became surety upon a bond executed by *B* for repayment, in May 1872, to the plaintiff, of certain advances, promising, "if *B* does not pay eventually (shesh porjunto), I will" Default was made, and in April 1878 the plaintiff filed a suit

——— art. 66 (1871, art. 65).

2. ——— *Bond—Interest payable*

BABU *v.* GOURI PERSHAD BIAS [I. L. R., 5 Calc., 21

3. ——— and art. 116—*Bond*

LIMITATION ACT, 1877—*continued.*

be applied to a suit for failure to pay the bond debt. COLLECTOR OF ETAWAH *v.* BETI MAHARAM [I. L. R., 14 All., 162

——— art. 67 (1871, art. 66).

See DEKKAN AGRICULTURISTS' RELIEF ACT, 1879, s. 72 . I. L. R., 9 Bom., 461

——— art. 69 (1871, art. 68)—*Bill of exchange—Dishonour of bill—Suit against acceptor.*—*M*, on the 12th October 1855, drew a bill of exchange, payable three months after date, in favour of *B*, which was accepted by *J*. Before the bill became due, *B* endorsed it to *P*, who again endorsed it for full value to *M B & Co.*, of which firm *M L* was a partner. *M D & Co.* discounted the bill with *G*, who presented it at maturity to *J*, who dishonoured it. *G* thereupon sued *M L* and recovered a decree, which *M L* satisfied. *M L* thereupon brought the present suit, on the 18th February 1865, against *J* as the acceptor of the bill for the amount he paid under *G*'s decree. *Held* (confirming the decision of NORMAN, J.) that the suit was barred by limitation, the plaintiff's cause of action having accrued when the bill became payable and the acceptor refused to pay. MOHENDRO LALL BOSE *v.* JADUB KISSEN SINGH 14 W. R., O. C., 5

S. C. in the Court below . Bourke, O. C., 157

——— art. 72 (1871, art. 71)—*Promissory*

that the law of limitation began to run upon the expiration of six months from the date of the note JEAUNISSA LADLI BEGAM SAHEB *v.* MANIKJI KHARSETJI [7 Bom., O. C., 36

See MADHAVBHAI SHIVBHAN *v.* FATTESING NUTHABHAI . . . . 10 Bom., 487

——— art. 73 (1871, art. 72).

1. ——— *Promissory note payable on demand.*—Under Act XIV of 1859, the period of limitation on a promissory note payable on demand *commenced to run from the date of the note,* and not from the date of demand. VINAYAK GOVIND *v.* BABAJI . . . I. L. R., 4 Bom., 230

HEMPANMAL *v.* HANUMAN . . 2 Mad., 472

TARACHAND GHOSE *v.* ABDUL ALI [8 B. L. R., 24: 16 W. R., O. C., 1

S. C. in Court below. ABDUL ALI *v.* TARACHAND GHOSE . . . . . 6 B. L. R., 292

The Act of 1871, however, altered the time from which the cause of action arose in such a case to the date when the demand was made, but under the present Act, the law was again altered and now remains as it was held to be under the Act of 1859.

2. ——— *Promissory note payable on demand—Cause of action.*—The defendant gave the plaintiff a promissory note on the 5th August 1869, payable on demand with interest at 5 per cent per annum. No sum either in respect of principal or interest was paid on the note, and payment was demanded for the first time in November 1875. Act XIV of 1859 contained no provision as to the date of

See VENKATA CHELLA MUDALI *v.* SASHAGHERRY RAU . . . . 7 Mad., 283

and MOLAKATALLA NAGANNA *v.* PEDDA NARAPPA [7 Mad., 288

3. ——— *Act XIV of 1859—Act IX of 1871—Promissory note payable on demand.*—On the 12th December 1864 the plaintiff sold seven bars

run from 1st Jyest vadya, Shake 1787 (A.D 1865). This entry was signed by the defendants. The plaintiff drew several times against this account

GOVIND *v.* BABAJI . . I. L. R., 4 Bom., 230

These are cases where the suit was, when Act IX of

4. ——— *Suit on promissory note executed while Act XIV of 1859 was in force, but*

LIMITATION ACT, 1877—*continued.*

enactment, from which the period is to be reckoned, and does not make a demand a mode of extending the period of limitation CHINNASAMI IYENGAR *alias* STREENIVASSA RAGHAVA CHARYAR v. GOPALACHARRY . . . . . 7 Mad., 392

5. ———— *Promissory note—Novation*—The holder of a promissory note, payable on demand, dated 14th April 1870, demanded payment on 8th December 1872. The maker then paid interest

sory note; that the period of limitation must be reckoned from 1st April 1873, and that consequently a suit to recover the balance due on the note, instituted on 27th March 1876, was not barred. NATA HIRA v JANARDAN RAMACHANDRA I. L. R., 1 Bom., 503

The question was raised under the Act of 1871, whether the bringing of an action to recover the amount due on the note could be regarded as a sufficient demand, but was undecided.

See MADHAVBHAI SHIVBHAI v. FATTESING NATHUBHAI . . . . . . 10 Bom., 487

6. ———— *Promissory note payable*

law of limitation must be determined by sch. II of that enactment, which gives three years from date of demand. *Held* also that the suit was not barred, there being no suggestion of any demand having been made before the suit was instituted. MADHAVAN v. ACHUDA . . . I. L. R., 1 Mad., 301

———— art. 74 (1871, art. 74).

Under Act XIV of 1859, the decisions seem to have been in accordance with this article.

See MUNNA JHUNNA KOONWAR v. LALJEE ROY [1 W. R., 121

ULTAF ALI KHAN v. RAM LALL [Agra, F. B., 83: Ed. 1874, 63

———— art. 75 (1871, art. 75).

See BOND . . . I. L. R., 4 Bom., 96
[I. L. R., 3 Mad., 61

1. ———— *Promissory note payable by instalments*—A promissory note, dated 2nd April

due on 2nd October 1868. In an action brought on 19th October 1871 for the recovery of the whole amount,—*Held* that the right to bring the suit under

LIMITATION ACT, 1877—*continued.*

Act XIV of 1859, s 1, cl 10, accrued to the plain-

nothing in Act XIV of 1859 to give any such effect to an acceptance of part-payment after the whole debt has become due. GUMNA DAMBERSHET v. BHIKU HARIBA . . . . I. L. R., 1 Bom., 125

2. ———— *Money payable by instalments.*—In a suit for recovery of a certain sum of money, the present defendant intervened by a petition agreeing to pay the whole amount due on the bond if the first instalment was not paid by the debtor on the 16th of December 1863 In this suit, brought on the 11th of April 1867, for recovery of the whole amount,—*Held* that, under cl 10, s 1, Act XIV of 1859, the claim was barred GAUR HARI DAS v MADAN MOHAN BISWAS
[3 B. L. R., A. C., 16: 11 W. R., 330

3. ———— *Promissory note payable by instalments—Non-payment of instalment—Payment of subsequent instalments*—In August 1856 *G H W*, *B B*, and *J W* (the two latter being sureties, and having been treated as such by the plaintiff) jointly and severally executed a promissory note to *M T B*, payable by instalments, which were irregularly paid till January 1860, when they ceased, the instalment payable on December 10th, 1857, not having

ation runs from, the non-payment of an instalment; and that acceptance of subsequent instalments on a note so payable is not a waiver of the limitation which has so commenced to run against a surety BREEN v. BALFOUR . . . . Bourke, O. C., 120

NARAYANAPPA v. BHASKAR PARMAYA
[7 Bom., A. C., 125

RAM KRISHNA MAHADEV v BAYAJI SANTAJI
[5 Bom., A. C., 35

LIMITATION ACT, 1877—*continued.*

But *see* GUMNA DAMBERSHET *v.* BHIKU HARIBA [I. L. R., 1 Bom., 125

4. ———— *Bond payable by instalments—Stipulation to recover by execution—Cause of action.*—Where a certain amount of money was

ment occurring at any one of the stipulated periods for the payment of an instalment,—*Held* that, as a separate suit could not be brought for the whole amount on the occasion of any default which occurred before the termination of the last kist, the whole amount could not, for the purposes of the law of limitation, be held to be due on the occasion of any such default. JUGGUT MOHINEE DOSSEE *v.* MONOHUR KOONWAR . . . 25 W. R., 278

5. ———— *Act, 1871, art. 75—Bond*

exigible. Default was made in payment of several

default the benefit of the provision in the 75th clause of second schedule of Act IX of 1871 was not waived. UNCOVENANTED SERVICE BANK *v.* KHETTERMOHUN GHOSE . . . . . 6 N. W., 88

6. ———— *Bond payable by instalments—Waiver of default.*—A bond, dated the 23rd

ment, interest should be paid at 1½ per cent. per mensem till the whole amount was paid, and, second, that in default of payment of any two of the monthly

7. ———— *Bond payable by instalments—Waiver.*—On the 24th May 1866, *H* gave *A* a bond payable by instalments, which provided that, if default were made in the payment of one instalment, the whole should be due. The first default was made on the 28th June 1866. No payment was made after Act IX of 1871, sch. II, No. 75, came into force. *Held* in a suit upon such bond that limitation began to run when the first default was made, and no waiver, before Act IX of 1871 came into force, could affect it. AHMAD ALI *v.* HAFIZA BIBI I. L. R., 3 All., 514

See RADHA PRASAD SINGH *v.* BHAGWAN RAI [I. L. R., 5 All., 289

8. ———— *Waiver—Proof—Abstention from suit.*—Mere abstinence from suit is not

NAYANA . . . I. L. R., 7 Mad., ...

9. ———— *Debt payable by instalments—Waiver—Proof.*—Where a bond for the payment of money by instalments contains a condition that the whole sum then remaining due shall become payable on failure to pay any one instalment, the

GOPALA *v.* PARAMMA . I. L. R., 7 Mad., 583

PEAL . . . . I. L. R., 2 All., ...

12. ———— *Decree payable by instalments—Default—Waiver—Estoppel—Application for execution as provided for in case of default—Application to recover instalments.*—A decree for the payment of money directed that an amount less than the amount sued for should be paid by instalments, and that, if default were made in payment of one instalment, the amount sued for should be payable. Default having been made, the decree-holder, on the 7th May 1877, applied for execution of the

LIMITATION ACT, 1877—*continued.*

decree for the larger amount. It appeared that at

The application of the 7th May 1877 was struck off

with reference to the default in respect of the instalment for September 1876. The Court refused to allow execution to issue for such amount, but allowed

13. ——————— *Construction of decree—Decree payable by instalments—Execution of decree.*—A consent decree for R350 directed payment of the money by fourteen half-yearly instalments of R25 each, in Cheyt and Assin of each year, the first instalment to be paid in the month of Cheyt 1283 (March-April 1877) The decree contained a provision that on default of payment of any one instalment, the execution-creditor should have the option of executing the decree for the whole amount

[I. L. R., 9 Calc., 857

14. ——————— *Verbal contract—Debt payable by instalments.*—*A* entered into a verbal

LIMITATION ACT, 1877—*continued.*

ment. Four years after the first instalment was due *B* sued *A* to recover the sum due on the various instalments not barred by limitation. *Held* that *B* was not bound to sue for the whole amount due directly on *A*'s failure to pay the three successive instalments *Semble*—Art. 75, sch. II of Act XV of 1877, does not apply according to its strict terms to a suit brought upon a verbal contract. KOYLASH CHUNDER DASS *v.* BOYKOONTO NATH CHUNDRA

[I. L. R., 3 Calc., 619: 2 C. L. R., 167

15. ——————— *Cause of action—Bond—Payment by instalments—Liability for whole amount on failure of payment of instalment.*—On the 20th August 1879 the defendant, being indebted to the plaintiff, gave his bond for R8,000 The bond provided for the payment of monthly instalments of R80 each, the first of such instalments to become due on the 4th September 1879 The bond also contained the following clause "If the said Arthur Bowles shall—in default of payment of any one of such instalments, or in the event of default being made ... when and ... ct of the ... [amantram ... strators or assigns—pay the whole amount which may then be due under and by virtue of these presents without

No further instalments were paid, but no demand for payment of the entire sum secured by the bond was made by the plaintiff until the 30th January 1884 The plaintiff filed this suit on the 28th April 1884. The defendant contended that the plaintiff's cause of action arose on the 4th December 1879, when he (the defendant) failed to pay the instalment then due and pleaded limitation. The plaintiff contended that under the bond the cause of action did not arise until the date of his demand, *viz.*, on the 30th January 1884. *Held* that the suit was not barred.

were made The cause of action did not arise against the defendant until the date of demand, *viz.*, the 30th January 1884 HANMANTRAM SADHURAM *v.* BOWLES . . . I. L. R., 8 Bom., 561

16. ——————— *Bond payable by instalments—Cause of action—Limitation Act, 1877, arts. 67, 68, and 80.*—*B* and *S* executed a bond,

LIMITATION ACT, 1877—*continued.*

Held by STUART, C.J., that limitation commenced

when the bond became due; that according to the stipulation in the bond it would become due on failure

17. ———— *Decree payable by instalments—Instalment, Failure of, whole sum decreed to fall due—Right of decree-holder to waive his right to execute the whole decree—Waiver.*—A proviso in a decree made payable by instalments, by which the whole amount of the decree is to become

18. ———— *Instalment bond—Default in one instalment, the whole amount to fall due—Waiver*.—The mere fact that a creditor has done nothing to enforce a condition in an instrument, under which the whole debt became due on failure in the payment of one instalment, is no evidence of waiver within the meaning of art. 75 of the Limitation Act. NOBODIP CHUNDER SHAHA *v.* RAM KRISHNA ROY CHOWDHRY

[I. L. R., 14 Calc., 397

19. ———— *Bond payable by instalments—Default in payment of an instalment—Waiver of a condition of forfeiture on default in payment of one instalment—Acceptance of an instalment overdue.*—A bond payable by instalments provided that, if default was made in paying one instalment, the whole debt should become due. The amount of the third instalment was paid five days after it became due. The lower Court found that this payment was accepted by the obligee as a payment made on account or in satisfaction of the

constituted a waiver within the meaning of art. 75

LIMITATION ACT, 1877—*continued.*

of sch. II of the Limitation Act, 1877. NAGAPPA *v.* ISMAIL . . . I. L. R., 12 Mad., 192

20. ———— *Execution of decree—Decree payable by instalments—Default—Waiver.*—A decree was made for payment of the decretal amount by monthly instalments running over a period of twelve years; and it was provided that on default the decree-holder might execute the decree as a whole for the balance then due. In 1883, a default was made, and in 1884 the decree-holder filed an application for execution in respect thereof, but did not

21. ———— *Payment of bond debt by instalments—Right to sue for whole debt on default*

remainder at intervals of six months. The document contained the following clause "If any of the instalments is not duly paid, I am to pay the whole amount with interest at eight annas per cent. per annum." The defendant failed to pay the first instalment, which the plaintiffs admitted was now barred, but on the 10th June 1895 the plaintiffs filed this suit to recover the remainder of the debt and interest. The defendant pleaded that under the above clause the whole sum became due on the failure to pay the first instalment, that the right to sue which then accrued was never waived, and that the suit was now barred by limitation. *Held* that the plaintiffs having failed to prove a waiver of the right of suit which accrued to them in August 1891, the suit was barred by limitation. The waiver contemplated by art. 75 of sch II of the Limitation Act (XV of 1877) must be either an agreement between the parties, or such conduct as will itself afford clear evidence of a legal waiver. KANKUCHAND SHIVCHAND *v.* RUSTOMJI HORMUSJI

[I. L. R., 20 Bom., 109

———— art. 80 (1871, art. 80)—*Suit on un-*

———— art. 81 (1871, art. 82)—*Suit by surety of lessee for refund of rent paid to wrongful heir of deceased lessor.*—In a suit by the surety of

LIMITATION ACT, 1877—*continued.*

a lessee for the refund of rent paid to the wrongful heir of the deceased lessor, the cause of action as against the wrong-doers dates from the time when they were declared by a competent Court to have paid to a party without title, and the cause of action as against the lessee dates from the time when the surety was made to pay the rent to the rightful heir on default of the lessee. ROY HUREE KISHEN v ASMEDH KOONWAR . . W. R., 1864, 57

——— art. 82 (1871, art. 83)—*Suit for contribution—Cause of action*—A surety who had discharged the amount of a bill guaranteed by him and another as co-surety sued his co-surety for contribution *Held* that, the cause of action in the suit being the right to contribution, that right accrued, not when the bill in question was dishonoured, but when the surety took it up and paid it. CONSTANTINE v DREW 1 N. W., Pt. II, p 42: Ed. 1873, 100

——— art. 83 (1871, art. 84).

1. ——— *Contract of indemnity.*—In 1864 a lease of a house was granted to *A* for a term of ten years. The lease contained a covenant

rent and damages for non-repair *B* defended the

amount which he had been compelled to pay *C* and

damnified"—as the time when the plaintiff was actually damnified was when *B* recovered against him PEPIN v. CHUNDER SEEKUR MOOKERJEE

[I. L. R., 5 Calc., 811: 6 C. L. R., 167

2. ——— *Contract of indemnity*—

25th October 1879 and subsequently *Held* that the law of limitation applicable to the set-off was art 83, sch. II of the Limitation Act, that limitation would run from the time when the plaintiff was actually damnified, and should be reckoned to the date of the institution of the suit, and not to that of claiming the set-off, which was after the defendants' names were brought on the record, and that the set-off was therefore in time. *Walker* v *Clements, 15 Q. B., 1046,* referred to PRAGI LAL v. MAXWELL

[I. L R, 7 All, 284

——— art. 84 (1871, art. 85).

1. ——— *Act XIV of 1859, s 1, cl. 9—Beng Reg XX of 1812, s. 5—Suit for fees due to pleader*—A suit brought to recover fees due to plaintiff as pleader in three suits was held to be barred by limitation as instituted after three years, that being the period of limitation in one case in which the defendants had agreed to pay the fees according to law, such agreement being an obligation for the payment of money within the meaning of s. 5, Regulation XX of 1812, and that being also the limitation applicable under cl. 9, s 1, Act XIV of 1859, in the other cases in which there was no written engagement to pay the fees RASH MOHUN GOSWAMY v. ISSUR CHUNDER MOOKERJEE

[9 W. R., 113

2. ——— *Suit for pleader's fees not under written contract*—A suit for pleader's fees upon a vakalatnama which is in the form of a mere power of attorney, and is not a written contract, is barred by limitation if not brought within three years. In the absence of evidence of any express agreement as to when the fees are to be paid, the implied agreement must be taken to be for payment at the time when the case is decided KASHINATH ROY CHOWDHRY v. ISSUR CHUNDER MOOKERJEE

[5 W. R., 297

DWARKANATH MOITRO v. KENNY

[5 W. R., S C. C. Ref., 1

CARRUTHERS v. MENZIES . . . Cor., 40

3 ——— *Act XIV of 1859, s. 1, cls 9 and 10—Suit by vakil for fees—Cause of action.*—The defendants retained the plaintiff as their

The present suit was instituted in December 1866. *Held*, reversing the decree of the lower Appellate Court, that

plaintiff's r

completely

suit, which

the present suit, having been brought within three years from that date, was not barred. BUCKAPATNAM THATHACHARLU v KAJAMIYA . 6 Mad., 265

4. ——— *"Suit"—Attorney and client—Taxation of bill of costs—Application by*

LIMITATION ACT, 1877—*continued.*

attorney for payment or attachment—Rule 149, Com. Law Rules of Bombay Supreme Court.—An appli-

pay the balance shown by the Taxing Master's *allocatur* to be due in respect of his bill of costs, and why, in default of such payment, attachment should not issue against the person and property of the client, is not a "suit" within the meaning of the Limitation Act (IX of 1871). Such an application as the above is not barred by any law of limitation now in force in British India. ABBA HAJI ISHMAIL v. ABBA THARA [I. L. R., 1 Bom., 253

5. ———— *Attorney and client—Bill of costs—Civil Procedure Code, s. 206—Compromise of suit without knowledge of attorney.*—A solicitor was retained in July 1871 to execute a decree. In November 1871 a prohibitory order was made in the cause, after which the solicitor did nothing more in the matter. In June 1872 the

amount of his bill of costs,—*Held* that the plaintiff's claim was not barred by art. 85 of sch. II to Act IX of 1871. HEARN v. BAPU SAJU NAIKIN . . . . I. L. R., 1 Bom., 505

6. ———— *Suit by vakil—Termination of suit.*—The termination of the suit mentioned in art. 84 of sch. II of the Limitation Act (XV of 1877) means the date when judgment is given. BALKRISHNA PANDURANG v. GOVIND SAIVAJI [I. L. R., 7 Bom., 578

7. ———— *Solicitor and client—Termination of suit—Decree—Taxation of costs.*—A solicitor for a party to an appeal received a notice after the date of the decree that the costs of the other side would be taxed on a certain date, and, having informed his client, received instructions not to appear on taxation. *Held* that, until the costs were taxed and inserted in the decree and the decree had issued, the suit had not terminated within the meaning of art. 84 of sch. II of the Limitation Act, 1877. NARAYANA CHETTI v. CHAMPION [I. L. R., 7 Mad., 1

8. ———— *Taxed costs of an attorney, Suit for—Suit or particular business, Meaning of*—

clients to recover the costs of an application to the High Court,—*Held* that limitation began to run from the date of the judgment in the application. *Balkrishna Pandurang v. Govind Sivaji, I. L. R., 7 Bom. 578* and *Rothery v. Munnings, 1 B. & Ad., 5,* approved. Items of an attorney's bill for work done, subsequently to the judgment, in opposing the taxation of the opponent's costs, although done on his client's instructions, will not take the matter out of the Limitation Act. Such items do not form part of the costs of the original application. WATKINS v. FOX . . . I. L. R., 22 Calc., 943

ADMINISTRATOR GENERAL OF BENGAL v. CHUNDER CANT MOOKERJEE I. L. R., 22 Calc., 952 note

———— *art. 85 (1871, art. 87; 1859, s. 8).*

Under s. 8 of Act XIV of 1859, it was necessary that the persons who had the mutual dealings mentioned in the section should be "merchants or traders." The following cases were held not to be within the section:—

Repaying a debt contractor. PEARY MOHUN BOSE v. GOBIND CHUNDER ADDY . 10 W. R., 56

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COOMAREE DABEE . [10 B. L. R., 15: 16 W. R., P. C., 35 14 Moore's I. A., 134

Affirming the decision of the Court below in PHOOL KOOMAREE BEEBEE v. OONKURPERSHAD BOISTOBEE [2 Ind. Jur., N. S., 50 7 W. R., 67

Suit for balance of arutdari account and for commission and interest. MEHER CHAND SAHOO v. MORCOLYRAM . . . 14 W. R., O. C., 7

Suit for balance of accounts between raiyats and an indigo factory. DOYLE v. EDOO GAZEE [3 W. R., S. C. C. Ref., 13

DOYLE v. KHOOSEEAL KHAN [3 W. R., S. C. C. Ref., 1

DOYLE v. ALLUM BISWAS [4 W. R., S. C. C. Ref., 1

NOBIN CHUNDER SHAHOO v. SUROOP CHUNDER DOSS . . . . . . 6 W. R., 328

Suit for balance of account framed as if in the nature of a partnership demand. MCCORKINDALE v. YOUNG . . . . . 18 W. R., 466

YOUNG v. MCCORKINDALE . . 19 W. R., 159

...re the ... covery ... more ... ssein ... I, 235

Suit by commission agent against his principal. BISSESSUR GIR v. SREEKRISHEN SHAHA CHOWDHRY [24 W. R., 440

The following decisions were given under the Act of 1859:—

...—Balance ... ial ... to ... in ... It

LIMITATION ACT, 1877—*continued.*

is not necessary that there should have been such a buying or selling by each of the parties, so as to constitute him a trader within the strict meaning of the term. GHASSEERAM v MONOHUR DOSS

[2 Ind. Jur., N. S., 241

2. ———— *Mutual dealings—Mutual payment and receipt of money.*—Where each party paid money to the other, and received from the other an equivalent in bills, they were held to have had mutual dealings. LUCHMEE NARAIN v CHOONUN MEAH . . . . . 14 W. R., 184

3. ———— *Mutual dealings—Balance of account, Suit for.*—In a suit for the balance of an account with interest the Court was of opinion that the three years' limitation did not apply, but that the case was one of mutual dealings between the parties, and was governed by s 8, Act XIV of 1859. FERNANDES v. VASUDEV SHANBOG

[3 Bom, A. C., 82

4. ———— *Mutual dealings—Co-*

5. ———— *Account between principal and agent—Mutual accounts.*—An agreement between a principal and his agent commenced with an admitted balance, and clearly contemplated the existence of an account current containing mutual items of credit and debit The agreement contained a stipulation that on the adjustment of the accounts the principal should be bound to pay such balance as might be found due from him The

three years before the institution of the suit. WATSON v AGA MEHEDEE SHERAZEE

[L R., 1 I. A., 346

6. ———— *Mutual dealings—Item*

7. ———— *Mutual accounts*—To constitute a mutual account there must be transactions on each side creating independent obligations on the other and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations Thus an account consisting of entries of payments made by one party in reduction of his debt to the other and of

GHOSE MAHOMED . I L. R., 17 Mad., 293

8. ———— *Mutual dealings—Year—Balance of account.*—The defendant, in 186

the bills. Some renewals took place in August and September 1866. In March, May, and July 1866, the defendant made purchases from the plaintiffs, and the plaintiffs made purchases from the defendant. The plaintiffs were in the habit of closing their accounts on 30th June in each year. In an action for balance of account brought on 24th February 1870,—*Held* that the parties were merchants and traders having mutual dealings under s. 8

[5 B. L. R., 550: 14 W. R., O. C., 41

9 ———— *Mutual accounts—Suit for balance of account*—Art 85, sch. II of Act XV of 1877, is intended to apply to cases where an account has been going on between two parties, and balances have been struck from time to time, show-

on that account LALJEE SAHOO v ROGHOONUNDUN LALL . . I. L R., 6 Calc., 447

10. ———— *Balance of account—Mutual dealings*—Plaintiff had an account with a banking firm of which the defendant was a member. On the dissolution of this firm, plaintiff made up his accounts debiting the defendant with a share of the amount due to him from the firm, and afterwards he carried on business with the plaintiff separately It did not appear that any settlement had been made between the parties from the time of the dissolution of the firm down to the filing of

LIMITATION ACT, 1877—*continued.*

the plaint, or that the defendant had assented to a portion of the firm's debt being carried to his separate account *Held* that the plaintiff could not recover this sum with interest, as an item of a mutual, open, and current account, where there had been cross-demands between the parties. (*See* Limitation Act, XV of 1877, sch. II, cl 85.) ROY DHUNPUT SING BAHADOOR *v.* LEKRAJ ROY **1 C. L. R., 525**

11. ——— *Mutual accounts—Adjustment—Admitted item within period of limit-*

item, a suit was subsequently, on the 6th December 1877, filed for the balance due upon such adjustment. *Held* that, even assuming that on the date of adjustment the account ceased to be mutual, open, and current, art. 85 of sch. II of the Limitation Act (XV of 1877) was applicable, and that accordingly limitation ran from the close of the year 1931 S, *i.e*, the 20th April 1875. GONESH LALL *v.* SHEO GOLAM SINGH . . **5 C. L. R., 211**

12. ——— *Mutual current accounts—Limitation Act, 1871, art 62*—The manager of *A*, the proprietress of an indigo factory, on the 20th December 1869, paid into the kothi or bank of *B*, a banker, the sum of R1,200 to the credit of *A*, and from that time onwards sums of money were drawn by *A*'s m
purposes
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her account into *B*'s bank. The 2nd of July 1872 was the last occasion that any balance was due from *B* to *A*. Payments continued to be made on behalf of *A* into *B*'s bank up to the 12th of June 1873, when a sum of R1,083-8 was paid into her account; but, notwithstanding this payment, the balance of account was on that date against her. After the 12th of June 1873, *B* continued to make payments on behalf of *A*, and also to render monthly accounts in which he charged *A* with such payments, and also with the principal of, and interest upon, the
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1876, *B* instituted a suit against *A* to recover the balance of principal and interest due to him on the footing of the last account rendered by him to *A* *Held* that the account between *A* and B was not, and never had been, a mutual, open, and current account, and that the suit was therefore barred by limitation; and that the payments made by *B* on behalf of *A* within the period of limitation, even if
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that there had been at any time a mutual, open, and current account between them, that mutual relation terminated on the 2nd July 1872, or if not, then on the 12th June 1873, when the last payment was made on *A*'s account into *B*'s bank. MAHOMED *v.* ASHRUFUNNISSA . **I. L. R., 5 Calc., 759**

S. C. ASKERY KHAN *v.* ASHRUFUNNISSA **[6 C. L. R., 112**

13. ——— *Mutual accounts—Reciprocal demands.*—From the month of September 1873 until the month of May 1874 the plaintiffs at

plaintiffs realized from time to time at Bombay. Until the 8th January 1874 the balance of the account was sometimes in favour of the plaintiffs and sometimes in favour of the defendant. After that

last advance made by the plaintiffs was on the 10th May 1874. On the 10th May 1874 the total balance due by the defendant was R8,514-12-2. The plaintiffs calculated interest on this sum up to the 9th April 1877, and on the 19th April 1877 filed the plaint in this suit to recover the said amount The defendant pleaded limitation. The plaintiffs contended that the account between them and the defendant was a mutual account, and that, under cl. 87 of sch. II of the Limitation Act

tiffs and the defendant was a mutual, current, and open account within the meaning of cl. 87, and that the suit was not barred. Literally construed, cl. 87 would apply only to those cases in which both parties have in the course of their dealings made actual demands on one another. The more reasonable and more probable intention of the framers of the clause appears to have been that it should apply to cases where the course of business has been of such

14. ——— *Limitation Act, 1857, s. 19—Acknowledgment of debt contained in unregistered document—Admissibility of document as evidence of acknowledgment.*—The nature of the pecuniary transactions between *B* and *G* were such that sometimes a balance was due to the one and sometimes to the other. On the 1st October 1873 there was a balance due to *B*. During the ensuing year, as computed in the account, *G* made payments to *B*

LIMITATION ACT, 1877—*continued.*

exceeding such balance. On the 1ᵗʰ November 1876 a balance of R3,500 was found to be due from *G* to *B*. On the 11th December 1876, *G* executed a conveyance of certain land to *B*, for which such debt was partly the consideration In such conveyance *G* acknowledged his liability in respect of such debt He died before such conveyance was registered and it

by limitation when such acknowledgment was made; and that, if that article was not applicable, but the period of limitation began to run from the time each item composing such debt became a debt, still such debt would not have been barred when such acknowledgment was made, as the debt with which the year computed from the 1st October 1875 opened was extinguished by payments made by *G* in the course of that year KHUSHALO *v* BEHARI LAL

[I. L. R., 3 All., 523

15. ——— *Mutual current accounts —Reciprocal demands —A* employed *B* as his agent. *B* alone kept written debit and credit accounts. *A* sued *B* for a balance due on the account between them. *Held* that the debit and credit account showed reciprocal demands between plaintiff and defendants, and that the account was a mutual, open and current account within the meaning of Limitation Act, 1877, sch. II, art 85. LAKSHMAYYA *v* JAGANNATHAM I. L. R., 10 Mad., 199

16. ——— *Mutual, open and current accounts —A* acted as commission agent for *B* and *C A* furnished a debit and credit account in February 1878. The account was disputed, and the matter was referred to arbitration, for which purpose in March 1880 a "memorandum of items to be settled" was drawn up and signed by *B* and *C*, in

that the accounts were mutual, open and current accounts, and that the suit was not barred by limitation. SITAYYA *v*. RANGAREDDI

[I. L. R., 10 Mad., 259

17. ——— *Mutual account—Test of*

LIMITATION ACT, 1877—*continued.*

open and current account within the meaning of art 85 of the Limitation Act (XV of 1877), and that the suit was not barred by limitation The fact that

——— art. 86 (1871, art. 88)—*Suit to recover amount due on policy of insurance—Cause of action—Notice of loss* —A suit for the recovery of the amount due on a policy of marine insurance fell under cl 10 of s 1 of Act XIV of 1859. In such cases the limitation (in the absence of a custom allowing a certain time of grace) begins to run from the date when the defendant has notice of the loss, and refuses or neglects to pay NAROTAMDAS BHAGTANDAS *v*. DAYABHAI ICHHACHAND

[6 Bom., A. C., 34

——— art. 89 (1871, art. 90).

1. ——— *Cause of action—Balance of account.*—The representatives of a gomasta, who had, for the last four years of his life, taken the

and the suit, having been brought within the period of limitation from that date, was not barred. KALIKRISHNA PAUL CHOWDHRY *v*. JAGATTARA

[2 B. L. R., A. C., 139: 11 W. R., 76

Reversing, on appeal, KALEE KISHEN PAUL CHOWDHRY *v*. JUGUT TARA 9 W. R., 334

See RADHANATH DUTT *v* GOBIND CHUNDER CHATTERJEE 4 W. R., S. C. C. Ref., 19

2. ——— *Suit against agent for an account—Mooktear*—An account of his receipts and disbursements having been demanded from a *mooktear, he, on the 3rd of August 1872, wrote* a letter in which he promised to render full accounts during the ensuing vacation. This he neglected, though he did not refuse, to do. *Held* that the limitation for a suit to compel an adjustment of account ran from the time when the defendant's promise to render accounts was broken, and was governed by Act IX of 1871, sch II, art 90. (*See* Act XV of 1877, sch. II, art 89) HORI NARAIN GHOSE *v*. ADMINISTRATOR GENERAL OF BENGAL

[3 C. L. R., 446

3. ——— *Suit for an account between principal and agent.*—Where a plaint alleged a continued agency in the defendant and prayed for relief on the ground that there was a specific balance against him, and prayed for the recovery of such sum or any larger sum that might be proved to be payable,—*Held* that such suit was essentially one

LIMITATION ACT, 1877—*continued.*

for an account, and that limitation ran from the date on which the agency ceased. HURRONATH ROY v. KRISHNA COOMAR BUKSHI [L. R., 13 I. A., 123: I. L. R., 14 Calc., 147

4. ———— *Principal and agent—Suit by principal for an account—Object of a decree for an account, as distinguished from a decree made upon the hearing.*—A continued agency, or employ-

sum that might be proved to be payable *Held* that in such a suit limitation, which was governed by art. 90 of Act IX of 1871, commenced from the date on which the agency ceased. HURRINATH RAI v. KRISHNA KUMAR BAKSHI

[I. L. R., 14 Calc., 147
L. R., 13 I. A., 123

5. ———— *Suit by principal against agent to recover money received and not accounted for—Termination of agency—Act IX of 1872 (Contract Act), ss. 201, 218.*—Where an agent for the sale of goods receives the price thereof, the agency does not terminate, with reference to ss 201 and 218 of the Contract Act (IX of 1872), until he has paid the price to the principal; and a demand made by the principal for an account of the price is made "during the continuance of the agency" within the meaning of sch. II, art. 89, of the Limitation Act (XV of 1877) and a suit by the principal to recover the price is therefore within time if brought within three years from the date of such demand. The agency does not terminate immediately on the sale of the goods. It does not terminate at the time when the plaintiff obtained knowledge of the defendant's breach of duty. BABU RAM v. RAM DAYAL

[I. L. R., 12 All., 541

6. ———— *Suit by principal against*

were liable to the plaintiff as agents until they had accounted to him, and therefore his claim as to the piece-goods was not barred. *Babu Ram v Ram Dayal, I. L. R., 12 All., 541,* followed. FINK v. BULDEO DASS . . I. L. R., 26 Calc., 715
[3 C. W. N., 524

———— art. 90 (1871, art. 91)—*Suits governed by.*—What suits are governed by art. 91 of the Limitation Act, 1871, pointed out. TORAB ALI v MAHOMED AMEER HOSSEIN . 3 C. L. R., 105

———— art. 91 (1871, art. 92).

See MALABAR LAW—JOINT FAMILY
[I. L. R., 15 Mad., 6

LIMITATION ACT, 1877—*continued.*

1. ———— *Suit to set aside sale-deed.*—A suit of the kind mentioned in this article was under Act XIV of 1859 governed by the six years' limitation. THAKOOR PATTUCK v. RAM SOOMRUN LAL . . . . 2 N. W., 433

2. ———— *Application of art. 91.*—

3. ———— *Grant by zamindar of estate for maintenance—Lease by grantee in excess of his estate—Suit for possession after death of*

manent to a lessee. The latter obtained possession, and from him after the death of the original grantee for life the zamindars who succeeded the grantor

was perpetual, but it was held that it was void as against the successor of the grantor and not merely voidable after the grantee's death. *Held* that the suit for possession was not barred under art. 91 of the Limitation Act (XV of 1877) on the ... the ... Act.

... 158
L. R., 26 I. A., 216
4 C. W. N., 274

4. ———— *Suit to cancel instrument.*—*K*, to whom *B* had given a usufructuary mortgage of certain land, promising to put him in possession, sued *B* for the mortgagee-money, *B* having failed to put him in possession. This suit was instituted on the 22nd November 1875. On the 25th of ... *B* was about to

ember. On the 1st December 1875 *B* transferred certain land to *T* by way of sale. *K's* suit was dismissed by the lower Courts, but the High Court, on the 7th August 1876, gave him a decree. Certain property belonging to *B* was sold in execution of this decree, but the sale-proceeds were not sufficient

LIMITATION ACT, 1877—*continued.*

to satisfy the amount due on the decree. *K* thereupon, on the 1st July 1879, sued *T* to cancel the conveyance to him by *B* on the ground that it was fraudulent and without consideration. *Held* that the words in art. 91, sch. II, Act XV of 1877, "when the facts entitling the plaintiff to have the instrument cancelled or set aside became known to him," must be construed to mean "when, having knowledge of such facts, a cause of action has accrued to him, and he is in a position to maintain a suit," and consequently the period of limitation for *K*'s suit began to run, not merely when he had know-

ization of the unsatisfied balance of his decree, and the suit was within time TAWANGAR ALI *v.* KURA MAL . . . **I. L. R., 3 All., 394**

5. ———— and art. 114—*Suit to cancel instrument—Suit for the rescission of a contract—Time from which limitation runs—Equitable estoppel.*—*B*, *P*, and *G* sued to cancel a lease of certain land on the ground that the lessor was *not competent to grant the same, the defendants* being the lessor and the lessee The lessee's defence to the suit was that the lease had been executed with *B*'s knowledge, who caused it to be attested and registered, that it was recognized and adopted by *P* and *G*, who allowed the lessee to take possession of such land and accepted rent from him in respect thereof; that under these circumstances the plaintiffs were estopped from denying the lessor's competency to grant the lease, and that the suit was barred by limitation, as more than three years had elapsed from the date of the lease The lower Appellate Court affirmed the decree of the Court of first instance in favour of the plaintiffs on the ground that the lessee was aware that the lessor was not competent to grant the lease. *Held*, on second appeal by the lessee, that the limitation applicable to the suit was to be found in No 91, sch. II of Act XV of 1877, and not No. 114, that last article referring to the rescission of contracts as between promisors and promisees, and not to suits by third parties to have an instrument cancelled or set aside, and that, as regards *B*, inasmuch as the existence of the lease became known to him at the time of its execution, and three years from that time had expired, the suit was barred by limitation. The proper issues as between *P* and *G* and the lessee were framed and remitted for trial BHAWANI PRASAD SINGH *v.* BISHESHAR PRASAD MISR **I. L. R., 3 All., 846**

6. ———— *Suit for cancellation of instrument—Mahomedan law—Gift—Suit for possession of immoveable property.*—One of the

possession of the property transferred by the gift had not been delivered by the donor to the donee *Held* that, because the suit was not brought within three years from the date of the gift, it did not necessarily follow that the suit was barred by

IMAMAN BIBI . . **I. L. R., 6 All., 207**

7. ———— *Suit for cancellation of instrument—Specific Relief Act (I of 1877), s. 39—Suit for declaratory decree.*—The plaintiff, alleging that he was the proprietor of certain land, that defendant No. 2 had wrongfully and fraudulently mortgaged it to defendant No 1, and that defendant No 1 had applied for foreclosure of the mortgage, and notice of foreclosure had issued, claimed

aside of an instrument to which the limitation in No. 91, sch II of the Limitation Act, 1877, would apply (which relates to suits of the nature of those referred to in s. 39 of the Specific Relief Act), but rather one for a declaratory decree. SOBHA PANDEY *v.* SAHODRA BIBI . . **I. L. R., 5 All., 323**

8. ———— and art. 144—*Suit to cancel instrument—Champerty.*—The plaintiff sued for possession of certain immoveable property "by avoidance of a spurious deed of gift" executed by one *N*, deceased, in favour of the defendant *Per* STRAIGHT, *J*—That the suit was governed by art. 144, and not art 91, sch II of the Limitation Act, 1877 *Per* STUART, *C.J*—That the suit was governed by art 91, and not art 144, sch II of that Act. *Sikher Chand v. Dulputty Singh, I. L. R., 5 Calc., 363,* distinguished HAZARI LAL *v.* JADAUN SINGH . . . . **I. L. R., 5 All., 76**

9. ———— *Suit to set aside fraudulent deed—Minority—Fraud*—Where a deed of

the knowledge required is the date on which he attained majority. KULYAN CHURN MOOKERJEE *v.* BIPRO CHURN PURAIL . . **6 W. R., 321**

10. ———— and art. 95—*Suit to set aside dee*
Suit by mino
Act (XV of
of partition
art 91 or art.
of 1887), and must be brought within three years after the minor plaintiff has attained majority according to s. 7 of the Act. CHANVIRAPA *v.* DANAVA **[I. L. R., 19 Bom., 593**

11. ———— *Suit to set aside an instrument creating a charge on immoveable property and to recover possession.*—Art. 92, sch. II of Act

where a bare declaration is sought regarding the

LIMITATION ACT, 1877—*continued.*

cancellation of a bond or other instrument. *Sikher Chand v. Dulputty Singh, I. L. R., 5 Calc., 363,* followed. BOO JINATBOO v. SHANAGARVALAH KANJI [I. L. R., 11 Bom., 78

12. ——— *Suit to set aside deed—Fraud*—In a suit instituted in 1884 by a husband and wife to have a deed, granting land, which was executed by the husband in 1872, set aside on the ground that it had been obtained from the latter by fraud and undue influence, the facts relied upon were known to the husband from the date of the deed. Although in another suit a sale by the husband effected in 1879 was set aside in 1882 on the ground of his having been unduly influenced, he was not at the time of the previous transaction, nor for some years after it, mentally incompetent or unable to allow that knowledge to operate on his mind. *Held* that therefore the suit falling within s. 91 of sch. II of Act XV of 1877 was not maintainable by either of the plaintiffs. JANKI KUNWAR v. AJIT SINGH . I. L. R., 15 Calc., 58 [L. R., 14 I. A., 148

13. ——— *Mahomedan law—Gift—Suit by heir for share of donor's property by declaration of invalidity of gift.*—A Mahomedan, who in October 1875 executed a deed of gift of his property, under which possession was taken by the donee, died in June 1885, never having taken any steps to have the deed of gift set aside. In February 1886, a suit was brought by his nephew claiming a share in the donor's estate by right of inheritance, and by having it declared that the deed was procured from the donor by fraud and undue influence. It was found that the plaintiff was aware of the existence of the deed soon after its execution, and that, if there were any facts entitling him to have it cancelled, those facts were known to him more than three years before the institution of the suit. *Held* that the plaintiff had, during the donor's lifetime, no reversionary or vested interest in the estate, but a mere possibility of inheritance, and consequently the donor, when he executed the [illegible] ... as a suit by the donor to set aside the deed would at the time of his death be barred by art. 91 of the Limitation Act (XV of 1877), such a suit was also barred against the plaintiff, who obtained through him the cancelment of the deed, being a substantial and necessary incident of the claim, and the necessity which rested upon the plaintiff for obtaining such cancelment before he could dislodge the donee, not being obviated by his electing to call the suit one for possession of immoveable property. *Abdul Wahid Khan v. Nuran Bibee, I. L. R., 12 I. A., 91,* and *Jagadamba Chaodhrain v. Dakhina Mohun, L. R., 13 I. A., 84,* referred to. HASAN ALI v. NAZO [I. L. R., 11 All., 456

14. ——— and art. 120—*Suit for declaration of title—Incidental relief—Setting aside instrument*—The period of limitation for suits to declare title is six years from the date when the right accrued, under the Limitation Act, 1877, sch. II, art. 120; and this period is not affected by [illegible]

15. ——— *Will—Suit to contest validity of will.*—Art. 91 of sch. II of the Limitation Act of 1877 is not applicable to wills. SAJID ALI v. IBAD ALI . . . I. L. R., 23 Calc., 1 [L. R., 22 I. A., 171

16. ——— *Suit to declare document of no effect.*—A suit for a declaration that a document "was executed for nominal purposes and was not intended to take effect" is not a suit to cancel a document within the meaning of art. 91 of sch. II of the Limitation Act. NAGATHAL v. PONNUSAMI [I. L. R., 13 Mad., 44

17. ——— and arts. 92, 93—*Suit where the cancellation of a fraudulent instrument is ancillary to the main relief.*—Arts. 91, 92, and 93 of sch. II of the Limitation Act (XV of 1877) apply only to suits brought expressly to cancel, set aside, or declare the forgery of an instrument; but they do not apply to suits where substantial relief is prayed, and where the cancellation or declaration is merely ancillary and not necessary to the granting of such relief. ABDUL RAHIM v. KIRPARAM DAJI [I. L. R., 16 Bom., 186

18. ——— and arts. 92, 93, 144—[illegible] ... *Jagadamba Chaodhrain v. Dakhina Mohun Roy Chaudhri, I. L. R., 13 Calc., 308; L. R., 13 I. A., 84,* and *Janki Kunwar v. Ajit Singh, I. L. R., 15 Calc., 58; L. R., 14 I. A., 148,* referred to. MAHABIR PERSHAD SINGH v. HURRIHUR PERSHAD NARAIN SINGH I. L. R., 19 Calc., 629

19. ——— and art. 144—*Cancellation of instrument.*—A suit was filed in 1884 on behalf of a Malabar tarwad by two of its members to recover property improperly alienated in 1879 under a kanom instrument by the karnavan, who had since been removed from office. *Held* that since

LIMITATION ACT, 1877—*continued.*

a prayer for the cancellation of the kanom instrument was not an essential part of the plaintiffs' relief, the suit was not barred by the three years' rule in Limitation Act, 1877, sch. II, art. 91. UNNI v. KUNCHI AMMAL . I. L. R., 14 Mad., 26

20. ——— *Suit to set aside alienation by de facto manager of Hindu endowment.*—

I. L. R., 14 Mad., 26, and *Sikher Chund* v. *Dulputty Singh, I. L. R., 5 Calc., 363*, cited. SHEO SHANKAR GIR v. RAM SHEWAK CHOWDHRI

[I. L. R., 24 Calc., 77

21. ——— and art. 144—*Suit by junior members of a tarwad—Suit for declaration of invalidity of kanom and for possession of property.*—The junior members of a Malabar tarward brought a suit against their karnavan and senior anandravan and certain persons claiming under a kanom granted by the former for a declaration that the kanom was invalid and for possession of the land demised with mesne profits. The suit was filed nearly twelve years after the execution of the kanom. *Held* (1) that the suit was maintainable by the plaintiffs, (2) that the suit was not barred by limitation. ANANTAN v. SANKARAN

[I. L. R., 14 Mad., 101

22. ——— and art. 144—*Suit for land—Cancellation of instrument affecting the land by plaintiff.*—In a suit brought in 1889 to recover land, it appeared that the defendant had been in possession since 1885, having obtained in 1883 a conveyance of the land from one of the plaintiffs. It was found on the evidence that that conveyance had been obtained by fraud and was supported by no consideration. The other plaintiff claimed under an instrument of 1884, which recited that of 1883 and was executed by the same person. The plaint contained no prayer for the cancellation of the conveyance of 1883. *Held* that the suit was not barred by limitation. SUNDARAM v. SITHAMMAL

[I. L. R., 16 Mad., 311

23. ——— and art. 144—*Suit to recover lands of which defendant had been in possession as manager during plaintiff's minority—*

prayed that it might be cancelled. The defendant contended (*inter alia*) that the suit was barred by limitation, and pleaded adverse possession. *Held*

not get into possession under it, but only used it to defend his position, art. 91 would not apply. *Boo Jinatboo* v. *Sha Nagar, I. L. R., 11 Bom., 78.* ALAMKHAN v. YASINKHAN I. L. R., 17 Bom., 755

——— art. 92 (1871, art. 93).

1. ——— *Suit to set aside will—Fraud—Cause of action.*—Where no fraud is alleged, the three years' limitation in cl. 93 of the second schedule to the Limitation Act of 1871 will run from any attempt to enforce the instrument, although that attempt might not have been known to the person who brings the suit to declare it a forgery. Plaintiff and defendant were the widows of two joint uterine brothers. Defendant alleged that plaintiff's husband had left his share by will to the husband of

NISTARINY DASSEE v. ANUNDMOYE DASSEE

[2 C. L. R., 561

2. ——— *Attempt to enforce deed.*—In a suit in which the plaintiff had obtained a de-

perty decreed. The defendant objected that the deed was a forgery; but an order was made that the

sch. II, cl. 93. FAKHARUDDIN MAHOMED AHSAN v. OFFICIAL TRUSTEE OF BENGAL

[I. L. R., 8 Calc., 178
10 C. L. R., 176
L. R., 8 I. A., 197

Affirming on appeal the decision of the High Court, where it was held that a suit to declare the forgery of an instrument issued or registered or attempted to be enforced is required by art. 93 of sch. II, Act IX of 1871, to be brought within

LIMITATION ACT, 1877—*continued.*

three years of the date of the issue, registration, or attempted enforcement of the document, whichever may first happen; and if a document has once been used, or attempted to be used, a party having notice of such use or attempted use cannot, after the expiration of three years from such use or attempted use, bring a suit to have it declared a forgery by reason of any further attempt to make use of it. FAKHAROODDEEN MAHOMED AHSAN *v.* POGOSE

[I. L. R., 4 Calc., 209
2 C. L. R., 573

3. ———— and arts. 93 and 118—*Suit to set aside adoption—Deed of permission to adopt.*—The merits of a claim depended upon the authenticity of an anumati-patro (deed of permission to adopt) alleged to have been given to a widow by her husband, who died in 1832. She first adopted in 1884 a boy who soon after died. She then, in 1887, adopted the defendant, whose adoption the reversionary heirs of her husband brought this suit, in 1888, to have set aside. *Held* that neither art. 92, nor art. 93, of sch. II of the Limitation Act (XV of 1877) was applicable to bar the suit. There had been no "issue" of the instrument, the anumati-patro, within the meaning of the former article, the term "issue" having no application to such a document There had not, within the meaning of art. 93, before this suit, been any attempt to enforce the instrument against the plaintiffs. Art. 118, as the suit had been brought within due time after the adoption, did not bar it. HURRI BHUSAN MUKERJI *v.* UPENDRA LAL MUKERJI

[I. L. R., 24 Calc., 1
L. R., 23 I. A., 97

———— art. 93.

See FRAUD—EFFECT OF FRAUD.

[I. L. R., 11 Bom., 708

———— art. 95 (1871, art. 95; 1859, s. 10).

See DEBTOR AND CREDITOR.

[I. L. R., 16 Bom., 1

Suits to set aside decrees obtained by fraud were, under Act XIV of 1859, governed by cl. 16 of s. 1. AMEEN CHAND *v.* OOMEID SINGH . 1 Agra, 114

1. ———— *Fraud*—*A* sold a decree obtained by him under Regulation VII of 1799 to *B*, but after the sale realized the decree from the judgment-debtor. On application by *B* for execution, on 2nd January 1862, the fraud was discovered, and *B* was referred by the Collector to the Civil Court On 2nd October 1866 *B* brought his suit for recovery of the purchase-money from *A*. *Held* that the period of limitation ran from the discovery of the fraud The suit was not barred. GOPAL CHANDRA DEY *v.* PEMU BIBI

[1 B. L. R., A. C., 77: 10 W. R., 104

See RADHANATH DAS *v.* ELLIOTT

[6 B. L. R., 530
14 Moore's I. A., 1

S. C. RADHANATH DOSS *v.* GISBORNE & Co.

[15 W. R., P. C., 24

LIMITATION ACT, 1877—*continued.*

2. ———— *Fraud—Suit to recover purchase-money and costs.*—In a suit to recover from the defendant the amount of purchase-money paid by the plaintiff upon a sale to him of certain lands by the defendant's father and the costs incurred by the plaintiff in defending his title to the property against a prior purchaser for the same land from the defendant's father,—*Held* that the cause of action arose on the discovery of the fraud upon the plaintiff, and that there was knowledge of the fraud at all events in October 1859, the date of the judgment of the Civil Court affirming the title of the prior purchaser, notwithstanding the presentation of an appeal from that decision, and notwithstanding that the plaintiff remained in possession of the land until 1861. The present suit, having been brought more than six years after the judgment of the Civil Court, was held to be barred. RAMASWAMY MUDALI *v.* VALAYUDA MUDALI *alias* AIYATHORAY MUDALI

[4 Mad., 266

3. ———— *Act XIV of 1859, s. 10—Fraud by failure to pay share of revenue—*

CHUNDER ROY . . . 9 W. R., 553

4. ———— *Extension of time on account of fraud.*—Art. 95, sch. II of the Limitation Law, provides a period of limitation in extension of the period which, in the absence of fraudulent

GUDADHUR DEY . . . 25 W. R., 473

5. ———— *Fraud—Suit for possession of immoveable property.*—Art. 95 of the second

That article has reference to cases where a party has been fraudulently induced to enter into some transaction, execute some deed, or do some other act, and desires to be relieved from the consequence of such act. CHUNDER NATH CHOWDHRY *v.* TIRTHANUND THAKOOR

[I. L. R., 3 Calc., 504: 2 C. L. R., 147

6. ———— *Suit to set aside decree obtained by fraud—Suit against express trustee*—Certain of the grantees of lands, granted for the maintenance of the grantees and the support of a mosque and other religious purposes, sued for the removal of the superintendent of the property from his office. The parties to this suit entered into a compromise, which made certain arrangements for the management of the property, and a decree was made in accordance with the compromise. The grantees who were not parties to this suit then sued

LIMITATION ACT, 1877—*continued.*

the granters who were to set aside the compromise and decree on the ground of fraud *Held* that the suit fell within the terms of No 95, sch. II of the Limitation Act, 1877, and there was nothing about it which made the exemption of s 10 of that Act applicable to it MUHAMMAD BAKHSH v MUHAMMAD ALI [I. L. R., 5 All., 294

7. ——— *Suit to set aside sale on the ground of fraud.*—A suit to set aside an execution-sale on the ground that the decree was obtained by fraud is maintainable and is governed by art. 95 of the Limitation Act. MOTI LAL CHAKERBUTTY v. RUSSICK CHANDRA BAIRAGI [I. L. R., 26 Calc., 326 note 3 C. W. N., 395

See BHOBON MOHUN PAL v NUNDA LAL DEY [I. L. R., 26 Calc., 324; 3 C. W. N., 399

which places such an application under art 178 of the Limitation Act

8. ——— and arts 12 and 144—*Suit for relief on the ground of fraud—Suit to set aside execution-sale—Suit for possession of immoveable property.*—*Z* and his three minor sons were joint owners of a village. This *Z* hypothecated by deed of simple mortgage to *J*. Subsequently *Z* executed another deed of mortgage to *J*, part of

being ignorant of the fraud, confessed judgment as guardian of her minor sons. The entire rights and interest of *Z*'s heirs were sold in execution of the decree so obtained by *J*. Subsequently the fraud was discovered, and *Z*'s sons brought a suit to set aside the execution sale and to recover possession of the

art. 12, nor in art. 144, but that contained in art. 95 of sch. II of the Limitation Act,

LIMITATION ACT, 1877—*continued.*

alleged by them, lay upon the defendants. NATHA SINGH v. JODHA SINGH . I. L. R., 6 All., 406

9. ——— and art. 12 — *Suit by*

he did so, not as one who would have been bound by the sale if the suit had not been brought, but in order to obtain a declaration that he was not bound by it, the decree under which the sale was held having been fraudulent and collusive; so that the cause of action could only have arisen when he became aware of the fraud. Art. 95 of sch. II of Act XV of 1877 applied to the present suit, which was therefore in time. PAREKH RANCHOR v. BAI VAKHAT [I. L. R., 11 Bom., 119

10. ——— and arts. 63 and 84—*Suit on indemnity bond—Fraud—Cause of action*—On

against fraud. SHAPURJI JAHANGIRJI v SUPERINTENDENT OF THE POONA CITY JAIL . 12 Bom., 238

11. ——— *Fraud — Sale for arrears of revenue—Act XI of 1859, s. 33—Act IX of 1871, sch. II, art. 14.*—When one of several co-sharers fraudulently contrived to have an estate brought to

LIMITATION ACT, 1877—*continued.*

limited by s. 33 of Act XI of 1859 and art. 14 of the second schedule to Act IX of 1871 for a suit to set aside the sale had expired. The article which applies to such a suit is art. 95 of the latter Act. BHOOBUN CHUNDER SEN *v.* RAM SOONDER SURMA MOZOOMDAR . . I. L. R., 3 Calc., 300

12. ———— *Suit to set aside fraudulent revenue sale.*—Suit to set aside a sale of land, sold as if for arrears of revenue under Act II of 1864 (Madras) on the ground of fraud, and to recover possession of the land from the purchaser, who was alleged to be party to the fraud. *Held* that the suit was governed by art. 95 of sch. II of the Limitation Act, 1877. VENKATAPATHI *v.* SUBRAMANYA . . . . I. L. R., 9 Mad., 457

13. ———— *Revenue Recovery Act (Madras)—Mad. Act II of 1864, s. 59—Suit to set aside a sale for arrears of revenue—Fraud.*—In a suit, in July 1885, to set aside a sale of land of the plaintiff, made in July 1884 as if for arrears

Limitation Act, and that the suit was therefore barred. *Venkatapathi v. Subramanya, I. L. R., 9 Mad., 457,* explained. *Baij Nath Sahu v. Lala Sital Prasad, 2 B. L. R., F. B., 1,* and *Lala Mobaruk Lal v. Secretary of State for India, I. L. R., 11 Calc., 200,* considered. VENKATA *v.* CHENGADU [I. L. R., 12 Mad., 168

14. ———— and arts. 12 and 144—*Sale for arrears of revenue—Suit for possession of land—Fraud.*—The plaintiff's land was sold by the Revenue authorities for arrears of assessment due to the inamdar. The plaintiff applied to the Mamlatdar to have the sale set aside on the ground of fraud on the part of the inamdar, but his application was rejected, and the sale was confirmed in July 1879.

pursuance of an order of the Collector or other officer of revenue, and, if not for arrears of Government revenue, was at any rate a sale for arrears of rent recoverable as arrears of revenue. The plaintiff as occupant of the land was bound by the sale, unless and until it was reversed, and the title of the purchaser at the sale was a perfectly good title until the sale was set aside in due course of law. *Held* also that

place in

would ma

the case.

15. ———— and art. 96—*Suit for money paid under Land Acquisition Act—Fraud or mistake, Knowledge of.*—In 1876 *K* sued *M* on a

LIMITATION ACT, 1877—*continued.*

bond, dated 25th December 1869, for R5,000, by which certain land in the district of South Tanjore

been acquired by a railway company under the Land

to the subordinate Court for an order for payment

terest in the money sued for to *P*, who was made defendant in the suit on his own application and

VIRARAGAVAYYANGAR *v.* KRISHNASAMI AYYANGAR [I. L. R., 6 Mad., 344

16 ———— and art. 96—*Partition to detriment of minor—Suit by minor on attaining majority to recover his full share—Mistake in making partition.*—Certain members of a joint Hindu family partitioned the family property among them in such a way as to give one member of the family, who at the time of the partition was a minor, less than the share to which he was entitled. The minor

not subject to the limitation of three years prescribed by arts. 95 and 96 of the sch. II of Act XV of 1877. LAL BAHADUR SINGH *v.* SISPAL SINGH [I. L. R., 14 All., 498

———— art. 96 (1871, art. 97)—*Beng. Act VIII of 1869, s. 27—Suit for money paid in excess of road cess.*—In a suit to recover money alleged to

LIMITATION ACT, 1877—*continued.*

s. 27, Bengal Act VIII of 1869, but by art. 96, sch. II of the Limitation Act (XV of 1877). MATHURA NATH KUNDU *v.* STEEL . I. L. R., 13 Calc., 533

——— art. 97 (1871, art. 98).

1. ——— *Accrual of cause of action.* —In a suit brought on the 29th July 1867 to recover back a deposit of purchase-money paid in September 1863, it appeared that the vendor had re-sold the estate, and that the plaintiff thereupon sued for and obtained a decree for specific performance against the vendor and the purchaser at the re-sale. On appeal by the purchaser at the re-sale, this decree was reversed on the 29th August 1865. *Held* that the suit to recover back the deposit was not barred, since the cause of action for its recovery did not accrue till 29th August 1865. RAMJAY DEY *v.* SRINATH SINGH . 2 B. L. R., A. C., 170 : 11 W. R., 24

2. ——— *Suit to recover money paid*

advanced to *R.* It was held that the suit was barred by limitation under the provisions of Act IX of 1871, second schedule, 98. RAMPHAL LAL *v.* JAFIR ALI . . . . . . 7 N. W., 199

3. ——— and art. 62—*Suit to recover purchase-money where purchaser was unable to obtain possession—Failure of consideration—money paid—Money had and received.*—A sale which a member of a joint family (Mithila) had

money, so as to render it money had and received to the use of the payer within the meaning of art. 62 of sch. II of Act XV of 1877. But it failed at all events, when the purchaser being opposed

4. ——— and art. 62—*Suit to recover purchase-money paid on a void sale—Failure*

LIMITATION ACT, 1877—*continued.*

less than three years from the date of the last-mentioned decree, to recover the sum paid by him to the defendant as above mentioned. *Held* that the suit was not barred by limitation. VENKATANARASIMHULU *v.* PERAMMA . I. L. R., 18 Mad., 173

5. ——— and art. 64—*Retention of debt by debtor as part of consideration of another contract.*—Money due on an account stated which would as such have been barred in three years from the statement, under Act XV of 1877, sch. II,

of the price, but the parties failing to agree as to

——— art. 98 (1871, art. 99)—*Suit to recover money paid for tenure cancelled by sale for arrears of rent.*—A suit to recover consideration-money paid for a dar-patni cancelled by the sale of the patni for arrears of rent was governed by the general rules of limitation under Act XIV of 1859. JUDOONATH BHUTTACHARJEE *v.* NOBO KRISTO MOOKERJEE . . 3 W. R., S. C. C. Ref., 2

——— art. 99 (1871, art. 100)

Under Act XIV of 1859, the period of limitation was six years for the suits mentioned in the first part of this article,—*viz.*, suits by one who had paid the whole amount of a joint decree. JUMEELUN *v.* WALLEE AHMED . . . 10 W. R., 31

DOORGAMONEE DOSSEE *v.* DOORGA BHUNJ [2 W. R., 266

NOBO KRISTO BHUNJ *v.* RAJBULLUB BHUNJ [3 W. R., 134

1. ——— *Suit for contribution—Cause of action.*—Under art. 100 in sch. II of Act IX of 1871, when a person has paid more than his own share of a joint decree, limitation runs against a suit for contribution from the time that the excess

LIMITATION ACT, 1877—*continued.*

payment is actually made to the decree-holder. RADHA KRISTO BALO *v.* RUP CHUNDER NUNDY [3 C. L. R., 480

2. ———— *Suit for contribution—Joint liability under decree.—Quære—*Whether, in a suit for contribution on the ground that the plaintiff and defendants were jointly liable under a decree, in execution of which the plaintiff's property alone was sold, the limitation prescribed by art. 100, sch II of Act IX of 1871, is applicable, or that prescribed by art. 118, sch. II of the same Act FUCKORUDDEEN MAHOMED AHSAN *v.* MOHIMA CHUNDER CHOWDHRY . . I. L. R., 4 Calc., 529

The period of limitation for suits mentioned in the second part of this article,—*viz*, suit by a sharer in a joint estate who has paid the whole revenue,—was also six years under the Act of 1859. SHADEE LAL *v.* BHAWANEE . . . . 2 N. W., 52

CHOHAGUR *v* THAKOOREE SINGH . 1 Agra, 123

And the cause of action in such a suit was held to arise from the same time as is now expressly enacted. BUNWAREE MOHUN SAHA *v.* PRANNATH SAHA [2 W. R., 159

KALLY SUNKUR SUNDYAL *v.* HURO SUNKUR SUNDYAL [7 W. R., 29

3. ———— and art. 132—*Payment of entire rent by a co-tenant—Suit for contribution.*

payment did not create a charge on the land, and art. 132 of the Limitation Act was therefore not applicable, and the suit was consequently barred by limitation under art 99 THANIKACHELLA *v.* SHUDACHELLA . I. L. R., 15 Mad., 258

4. ———— and art. 132— *Suit to recover assessment paid by a co-owner of property from other co-owners—Charge on share of co-sharer.* —In 1868, the uncle of the plaintiff brought a suit (No 176 of 1868) against five members of the undivided family, to which the defendants in the present suit belonged and obtained a money-decree In execution of that decree, he attached and sold certain land, in which all the members of the defendants' family were interested At the sale he purchased the land himself, and was put into possession. In 1873,

litigation was a decree by the High Court, on the 23rd September 1879, declaring that the plaintiffs' uncle was only entitled to the interest of the five members of the family who had been defendant in his suit (No. 176 of 1868) in execution of the decree in which the property had been sold. The plaintiff brought the present suit, in 1883, against the other members of the family to recover their proportionate share of the assessment for the years 1875—1878, during which period he had paid the whole assessment. He prayed for a sale of their interest in the land. Both the lower Courts held that the payment of assessment did not create a charge on the property, and that the plaintiff having omitted to sue within three years from the date of the payments made by him, the present suit was barred. On appeal by the plaintiff to the High Court,—*Held*, confirming the lower Court's decree, that the suit was barred. The plaintiff paid the assessment as full owner of the property, and it was entirely by his own action that the defendants had been excluded from the property, and did not pay their quotas of the assessment. Under these circumstances, the payments could not be regarded as salvage payments so as to make them a charge, according to equity, justice, and good conscience, upon the shares of the other co-owners ACHUT RAMCHANDRA PAI *v.* HARI KAMTI . . I. L. R., 11 Bom., 313

5. ———— and art. 132—*Govern-*

the two plots being brought to sale, and on the 28th September 1885 instituted a suit to recover the amount. It was contended on behalf of the plaintiff that art. 132 of sch. II of Act XV of 1877 applied to the facts of the case, and that the plaintiffs were therefore entitled to recover all amounts so paid within twelve years of date of suit. *Held* that, as on the authority of *Kinu Ram Doss* v. *Muzaffer Hosain Shaha*, I. L. R, 14 Calc. 809, the plaintiffs had no charge upon the property in respect of which the payment had been made, and

[I. L. R., 15 Calc., ...

———— art. 102.

Suits for wages other than those specified in cl. 2 of s 1 of Act XIV of 1859 were governed by cl. 9 or 10 of that Act. JUMNA PERSHAD *v.* BHEEM SEIN [1 Agra, Mis., 8

NITTO GOPAL GHOSE *v.* MACKINTOSH [6 W. R., Civ. Ref., 11

———— *Suit for wages—Cause of action, Accrual of.*—Wages due to an employé leaving

LIMITATION ACT, 1877—*continued.*

Upholding on review, MACCORKINDALE v. YOUNG [18 W. R., 466

——— arts. 103, 104 (1871, arts. 103, 104).

These articles give the result of, and adopt the decisions under, the Act of 1859 As to prompt dower (art 103) KHAJARANNISSA v. RISANNISSA BEGUM [5 B. L. R., 84: 13 W. R., 371

MULLEEKA v. JUMEELA . . 11 B. L. R., 375 [L. R., I. A., Sup. Vol., 135

KHAJURANNISSA v. SAIFOOLLA KHAN [15 B. L. R., 306

NATHU v. DAUD 2 Bom., 309: 2nd Ed., 292

S C. DAUD v. NATHU 1 Ind. Jur., N. S., 113

1. ——— *Demand of portion of dower —Cause of action* — Where a wife demanded only a portion of her denmohr or dower from her husband, limitation as to her claim to the remainder will count from the date of her husband's death and not from the date of her former demand BEGOO JAUN v. GAEHEE BEBEE . 6 W. R., Civ. Ref., 19

As to deferred dower (art. 104). MAHAR ALI v. AMANI . . . 2 B. L. R., A. C., 306

MEHRAN v. KUBIRAN . . 6 B. L. R., 60 note

KHAJARANNISSA v. RISANNISSA BEGUM [5 B. L. R., 84: 13 W. R., 371

MULLEEKA v. JUMEELA . . 11 B. L. R., 375 [L. R., I. A., Sup. Vol., 135

2. ——— *Suit for dower—Wrongful* [illegible]

[illegible]

MAHOMED FAEZ v. OOMDAH BEGUM 6 W. R., 111

[illegible]

WAFEAH v. SAHEEBA . . 8 W. R., 307

[illegible] cable [illegible] ANEE

[illegible] W. R., 51

S. C. on appeal, WOOMATOOL FATIMA BEGUM v. MEERUNMUNNISSA KHANUM . . 9 W. R., 318

WAFEAH v. SAHEEBA . . 8 W. R., 307

In the latter case,—that is where it is [illegible]

[illegible]

3. ——— *Contract to hold money on loan—Repayment to be made by husband in case of divorce—Dower* —In the case of an advance of money [illegible]

by the husband in the event of a divorce taking place, or out of his effects at his death,—*Held* that the Mahomedan law of dower was not applicable to the suit, and that the period of limitation was three years from the date of the divorce or the death of the husband. ANONYMOUS CASE . 5 Mad., 280

——— art. 105 (1871, art. 105).

Under the Act of 1859, the six years' period of limitation was applicable to suits of the nature described in this article (suits by a mortgagor after a mortgage is satisfied for surplus collections received by the mortgagee)

See LALL DOSS v. JAMAL ALI [B. L. R., Sup Vol., 901: 9 W. R., 187

——— art. 106 (1871, art. 106).

See CASES UNDER ART. 120 [I. L. R., 4 All., 437

To suits of the nature described in art. 106 (suits for an account and share of the profits of a dissolved partnership), the six years' period of limitation applied under the Act of 1859. JWALA PERSHAD v. KEDAR NATH . . . . 3 Agra, 175

NURSINGH DOSS v. NARAIN DOSS . 3 N. W., 217

BHUTOO RAM v. PUHUL CHOWDHRY 7 W. R., 36

KALEE KRISTO CHOWDHRY v. HARAN CHUNDER DEY . . . . . . 19 W. R., 217

——— *Suit in nature of partnership demand* —Plaintiff was in the service of the principal defendant (*C*), who was carrying on a partnership business with another as founders and engineers During such service, plaintiff, *C*, and a [illegible]

[illegible] his hands plaintiff's monthly salary and appropriate so much as might be necessary to plaintiff's share of the expenses After sale of the tug, the account was made up, showing a separate loss to each partner of [illegible]

[illegible]

LIMITATION ACT, 1877—*continued.*

claim was not a partnership demand. MacCorkindale v. Young . . . . 18 W. R., 466

S C. affirmed on review. Young v. MacCorkindale . . . . . 19 W. R., 159

——— art. 107 (1871, art. 107).

Under Act XIV of 1859, six years was the period of limitation for the suits mentioned in this article (suits by the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate) As to the cause of action, the decisions were in accordance with this article.

See Ram Krishna Roy v. Madan Gopal Roy [6 B. L. R., Ap., 103: 12 W. R., 194

Bimala Debi v. Tarasundari Debi [6 B. L. R., Ap, 101: 14 W. R., 480

——— *Joint Hindu family—Debts of*

date on which he repays the loan and releases his security. *Sunkur Pershad* v. *Goury Pershad, I L. R., 5 Calc., 321, Ram Krishna Roy* v. *Madan Gopal Roy, 6 B. L. R., Ap., 103 12 W. R., 194,* followed. Aghore Nath Mukhopadhya v. Grish Chunder Mukhopadhya I. L. R., 20 Calc., 18

——— art. 109 (1871, art. 109).

1. ——— *Act XIV of 1859, s. 1, cl 16—Suits for mesne profits.*—Six years was the period of limitation for suits for mesne profits under cl. 16, s. 1 of Act XIV of 1859. Lalla Gobind Suhaye v. Munohur Misser . . 1 W. R., 65

Ram Surun Singh v. Gooroo Dyal Singh [1 W. R., 83

Pratap Chandra Burua v Swarnamayi [3 B. L. R., Ap., 81

Issureenund Dutt Jha v. Parbutty Churn Jha . . . . 3 W. R., 13

Ramaput Singh v. Furlong . 3 W. R., 38

Luchmun Singh v. Miriam . . 5 W. R., 219

Muneeram Acharjee v. Turungo [7 W. R., 173

Balum Bhutt *alias* Ram Bhuth v. Bhoobun Lall . . . . 6 W. R., 78

Nawab Nazim of Bengal v. Raj Coomaree Debee. . . . . . . 6 W. R., 113

Kattama Nachiar v. Subbarama Aiyan. Zamindar of Shivagunga v. Subbarama Aiyan [4 Mad., 302

Hurrehur Mookerjee v. Mollah Abdoolbur [17 W. R., 209

Juggut Chunder Bhadoory v Shib Chunder Bhadoory . . . . . 23 W. R., 255

LIMITATION ACT, 1877—*continued.*

See also Modhoosoodun Sandyal v. Suroop Chunder Sircar Chowdhry [7 W. R., P. C., 73: 4 Moore's I. A., 431

2. ——— *Cause of action—Suit for mesne profits.*—In calculating the six years' mesne profits which the decree-holder was entitled to recover in this case, the cause of action was held to have arisen at the end of the year in which the ouster took place. Thakoor Doss Acharjee Chuckerbutty v. Shoshee Bhoosun Chatterjee 17 W. R., 208

Ram Chundra Roy v. Ambica Dossea [7 W. R., 161

3. ——— *Cause of action—Date of ascertainment of amount.*—Where the amount of mesne profits cannot be ascertained till after the end of the year, the cause of action was held not to arise until the end of the year. Byjnath Pershad v. Badhoo Singh. . . . . 10 W. R., 486

Thakoor Dass Roy Chowdhry v. Nobin Kristo Ghose . . . . . . 22 W. R., 126

Or in cases of dispossession, the date of dispossession is the date when the cause of action arises in suits for mesne profits. Ekbal Ali Khan v. Kalee Pershad . . . . . 3 W. R., 68

4. ——— *Mesne profits—Wrong-doers independent of the defendant—Civil Procedure Code (1882), s. 211.*—In a suit brought on the 26th September 1893 for mesne profits of land, for the possession of which a decree had been previously obtained against the defendant, the plaintiff claimed damages in respect of the Fusli years 1297-1300—

Chatterjee, 17 W. R., 208; and *Thakoor Dass Roy Chowdhry* v. *Nobin Kristo Ghose, 22 W. R., 126,* [illegible] the [illegible] for [illegible] er- [illegible] he [illegible] ed [illegible]

them; the case was remanded to determine [illegible] mesne profits were payable between the 26th September 1890 and the date, if any, when dispossession was proved. Abbas v. Fassihuddin [I. L. R., 24 Calc., 413

5. ——— *Dispossession under decree subsequently reversed by Privy Council.*—Where

LIMITATION ACT, 1877—*continued.*

plaintiff had been dispossessed of lands under a decree of the Sudder Court, subsequently reversed by the Privy Council on appeal, limitation as to his right to mesne profits during his dispossession ran from the date of the decree of the Privy Council. MASHOOK ALI KHAN *v.* JOWALA BUKSH . 2 N. W., 290

JOYKURUN LALL *v.* ASMUDH KOOER [5 W. R., 125

6. ——— *Cause of action—Dispossession.*—The cause of action in respect to mesne profits accrues on the date on which, but for the fact of dispossession, the plaintiff would have been entitled to receive them. LAKHI KANT DAS CHOWDHRY *v.* RAM DYAL DAS . . 5 B. L. R., Ap., 61

S. C. LUCKHEE KANT DOSS *v.* DEEN DYAL DOSS [14 W. R., 82

7. ——— *Default caused by act of another party—Assam—Suit for partition.*—Where a purchaser of a four-anna share was kept out of possession of a portion of the property sold, and having recovered judgment in a suit brought for possession

these proceedings, entitled to sue for mesne profits.

improperly kept out of possession was entitled to sue for all mesne profits during the period of his non-possession, subject to any grounds which the defendant could show which would entitle a Court of equity to deprive the plaintiff of his rights. In a suit brought in January 1862, respecting property situated in Assam, mesne profits for twenty-eight years prior to 1854 were decreed, subject to any equitable claims for deducting any portion, Act XIV of 1859 not applying to Assam previous to July 1862. NILKAMAL LAHURI *v.* GUNOMANI DEBI

[7 B. L. R., 113: 15 W. R., P. C., 38

8. ——— *Period when due—Time for making up accounts.*—Where the accounts of an

[19 W. R., 87

9. ——— *Suit for, by person restored to possession under decree of Privy Council.*—The right of action to a person who is restored to possession under a decree of the Privy Council does not accrue before the decision of the Privy Council; and he is entitled to interest on mesne profits from

10. ——— *Suit for possession.*—In a suit instituted after Act XIV of 1859 came into force, *mesne profits can only be recovered for the six years next preceding the institution of the suit.* A regular suit for mesne profits will lie after a suit for possession, if in the latter suit no question of mesne profits was raised or decided. PRATAP CHANDRA BURUA *v.* SWARNAMAYI

[3 B. L. R., Ap., 81: 12 W. R., 5

11. ——— *Suit for mesne profits.*—A claim for mesne profits during a period preceding the three years next before the filing of the plaint is barred by Act XV of 1877, sch. II, art. 109. KRISHNANAND *v.* PARTAB NARAIN SINGH

[I. L. R., 10 Calc., 792: L. R., 11 I. A., 88

12. ——— and art. 40—*Mesne pro-*

fully received by the defendant" within the meaning of Act IX of 1871, s. 109, and not a suit for "compensation for any wrong, malfeasance, nonfeasance, or misfeasance, independent of contract," within the meaning of art. 36 of the same Act. SHURNOMOYEE *v.* PATTARRI SIRKAR

[I. L. R., 4 Calc., 625

13. ——— *Suit for damages to personal property.*—Plaintiff brought a suit to establish

damages for injury to personal property, but for mesne profits, and that the six years' limitation was applicable to it. ELAHEE BUKSH *v.* SHEO NARAIN SINGH . . . . . . 17 W. R., 360

——— art. 110 (1871, art. 110; 1859, s. 1, cl. 8)

1. ——— *Suits for arrears of rent.*—Suits for arrears of rent were under Act XIV of 1859 to be instituted within three years from the last day of the Bengal (or other) year in which the arrears

LIMITATION ACT, 1877—*continued.*

claimed shall have become due. GOBIND KUMAR CHOWDHRY *v.* HARGOPAL NAG [3 B. L. R., Ap., 72: 11 W. R., 537

2. ———— *Suit for arrears of rent*— Where a part-proprietor of a certain talukh, who was

for the rent for the same period in the Civil Court,—*Held* that the suit was not one for the recovery of arrears of rent within the meaning of s. 29, Bengal Act VIII of 1869, but was governed by the provisions of Act XIV of 1859. The suit was one for rent of land, and fell within the scope of cl. 8, s. 1 of that Act GOBINDO COOMAR CHOWDHRY *v* MANSON . 10 B. L. R., 56: 23 W. R., 152

3. ———— *Suit for compensation in shape of rent for land*—A suit to make the defendant liable for compensation in the shape of rent for the land which he held in the name of his servant was held to be not a suit for rent under Bengal Act VIII of 1869, and was subject to the six years' limitation prescribed by cl 16, s. 1, Act XIV of 1859. KISHENBUTTY MISRAIN *v.* ROBERTS [16 W R., 287

4. ———— *Suit for compensation for use and occupation of land.*—Where a contract of lease was found to be a benami transaction and the

cl. 16 of s 1 of Act XIV of 1859 was applicable to it. DEBNATH ROY CHOWDHRY *v* GUDADHUR DEY PITAMBUR SEN *v.* DEBNATH ROY CHOWDHRY . . 18 W. R, 132

As to s. 1, cl. 8, of the Act of 1859, *see* POULSON *v.* CHOWDHRY . . . 2 W. R., 21

UNNODA PERSAUD MOOKERJEE *v.* KRISTO COOMAR MOITRO 15 B. L. R., 60 note: 19 W. R., 5

and HUREE KISHORE ROY *v* HUR KISHORE ADHIKAREE . . . 23 W. R., 134

5. ———— *Act XIV of 1859, s. 1, cl. 8—Suit for rent under benami lease—Use and occupation.*—Plaintiff, who was the zamindar, having obtained a decree against the auction-purchaser of a patni tenure held under his zamindari for the rents of the years 1279, 1280, and 1281, and being unable to realize the whole amount due under the same, subsequently learned that *A*, who had purchased a share in the patni from *B*, who derived his title from the original defendant, had been in possession during these years. He then sued *A* for the balance due under the first decree This suit was filed on the 21st Bysack 1285. *Held* that the second suit, whether it was governed by Bengal Act VIII of 1869 or by the general law of limitation, was barred, inasmuch as it was a suit for rent and brought more

LIMITATION ACT, 1877—*continued.*

than three years after the arrears became due.

[6 C. L. R., 62

6. ———— *Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 10—Suit for arrears of rent—Date from which limitation runs.*—In a suit for arrears of rent due under a decree given under s. 10 of the Rent Recovery Act (Madras Act VIII of 1865) the period of limitation in art 110, sch. II of the Limitation Act, commences from the date when the plaintiff was in a position to sue for rent, *i e.*, the date of the decree SOBHANADRI APPA RAU *v.* CHALAMANNA . I. L. R., 17 Mad., 225

7. ———— *Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 10—Suit to recover arrears of rent—Proceedings in Revenue*

(Madras), 1865, to enforce acceptance by the defendant of the pottah tendered by the landlord These proceedings had terminated on appeal in favour

8. ———— *Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 10—Suit to recover arrears of rent—Suit to enforce acceptance of pottah pending—Time from which period of limitation is computed.*—The cause of action, with reference to limitation, in a suit for rent, accrues on the date on which the rent is payable by custom or contract, irrespective of whether pottah has been tendered or a suit to enforce acceptance of pottah under the Rent Recovery Act (Madras), 1865, is pending. KUMARASAMI PILLAI *v.* PRESIDENT, DISTRICT BOARD OF TANJORE [I. L. R., 22 Mad., 248

RANGAYYA APPA RAU *v.* VENKATA REDDI [I. L. R., 22 Mad., 249 note

PARAMASIVA GOUNDAN *v* KANDAPPA GOUNDAN [I. L. R , 22 Mad., 250 note

9. ———— *Suit for arrears of rent by*

LIMITATION ACT, 1877—*continued.*

10. ———————— *Enforcement of vendor's lien.*—In 1887 the plaintiff sold land to defendant No 1, who in 1894, while part of the purchase-money remained unpaid, sold it to the defendants Nos. 2 to 4, who had notice of this fact. The plaintiff now in 1895 sued to enforce his vendor's lien. *Held* that the suit was barred by Limitation Act, 1877, sch II, art 111. NATESAN CHETTI *v.* SOUNDARARAJA AYYANGAR

[I. L. R., 31 Mad., 141

See CHUNILAL *v.* BAI JETEH

[I. L. R., 23 Bom., 846

———————— **art. 113 (1871, art. 113).**

See SPECIFIC PERFORMANCE—SPECIAL CASES . I. L. R., 3 Mad., 87

1. ———————— *Sale at fair valuation—Ascertainment of price*—In a suit for the specific performance of an agreement entered into in 1859 to grant a pottah when required, it appeared that the plaintiffs applied to the defendants for a pottah in 1874, and in March 1875 the defendants finally refused to make the grant, and the plaintiffs thereupon instituted their suit for specific performance. *Held* that they were not barred by limitation, as under Act IX of 1871, sch. II, art. 113, they had three years within which to bring their suit from the time when they had notice that their right was denied. NEW BEERBHOOM COAL COMPANY *v.* BULORAM MAHATA

[I. L. R., 5 Calc., 175 : 2 C. L. R., 268

S C on appeal to Privy Council, where, however, this point was not dealt with.

[I. L. R., 5 Calc., 932 : L. R., 7 I. A., 107

2. ———————— *Specific performance—Trust—Laches*—In 1860 certain shares in a company then formed were allotted to *S* on the understanding, as the plaintiffs alleged, that 120 of such shares should, on the amount thereof being paid to *S*, be transferred to and registered in the books of the company in the names of the plaintiffs In 1862

compel the defendant to transfer the shares to the

[I. L. R., 2 Calc., 323

LIMITATION ACT, 1877—*continued.*

3. ———————— **and art. 144**—*Suit on an award*—*Meaning of "contract" in art. 113*—*Specific Relief Act (I of 1877), s 30.*—By an award bearing date 7th July 1893 plaintiffs were held to be entitled to certain immoveable property. On 15th November 1897, they filed a suit to enforce the award. On its being contended that the suit was barred by limitation under art. 113 of the Limitation Act, it being in fact for the specific performance of a contract,—*Held* that the suit was not barred, the article applicable being art 144. A suit to enforce an award cannot be treated as a suit to enforce a contract within the meaning of art. 113, the word "contract" in that article being used in its ordinary sense. *Sukho Bibi* v. *Ram Sukh Das, I. L. R., 5 All*, 263, and *Raghubar Dial* v. *Madan Mohan Lal, I. L R., 16 All.*, 3, referred to. SORNAVALLI AMMAL *v.* MUTHAYYA SASTRIGAL

[I. L. R., 23 Mad., 593

4. ———————— *Suit for specific performance of contract—Suit on award—Act I of 1877 (Specific Relief Act), s. 30.*—A suit for money

of the Limitation Act, 1877, is applicable to such a suit SUKHO BIBI *v.* RAM SUKH DAS

[I. L. R., 5 All., 263

5. ———————— *Specific Relief Act (I of 1877), s 30*—*Suit for balance due under an award.*

[I. L. R., 16 All., 3

6. ———————— **and art. 144**—*Vendor and purchaser—Contract of sale—Suit for specific performance of contract*—

that suit. The purchaser subsequently brought a

leted,"

tended

is that

1877,"

and not art. 113 *Held* that the suit was essen-

of the contract of sale, and the relief by giving possession was comprised in the relief by specific performance of the contract of sale, and could not be governed in this suit by any but art. 113. But

LIMITATION ACT, 1877—*continued.*

assuming the suit might, so far as limitation was concerned, be entertained, still, as the right to possession was dependent on the contract of sale, if the suit could not be maintained for specific performance of the contract, it could not be maintained for possession of the property sold under the contract. MUHI-UD-DIN AHMAD KHAN *v* MAJLIS RAI [I. L. R., 6 All., 213

7. ——— *Breach of contract—Suit for specific performance*—In a suit to enforce the performance of an agreement alleged to have been entered into between the plaintiffs and the principal

suit, not having been brought within three years of the dates of those deaths, was barred by limitation. MOHADEO LALL *v.* NUNDUN LALL . 12 W. R., 22

8. ——— *Exchange—Agreement that if either party were deprived of land received he should receive other land*—In 1871 the plaintiffs and the defendants executed a deed whereby they

ings in certain proportions, and that, if as a result of such proceedings either of the parties were deprived of the lands exchanged or any part of them, the other should make it up out of certain of his own land. In 1881 the plaintiffs brought an action

1885 (within three years from the time the defendants refused to give them other land) they sued on the deed of 1871 to have the exchange therein provided for carried out *Held* by the Full Bench that the

having been brought within three years after their refusal to perform it, was within the time fixed by art 113, sch II of the Limitation Act (XV of 1877) HORI TIWARI *v.* RAGHUNATH TIWARI [I. L. R., 10 All., 27

——— art. 114 (1871, art. 114)—*Suit by company for price of shares allotted—Right of defendant to rescind contract—Laches of defendant.*— In a suit by a company for the price of shares allotted to the defendant in which the defence was that there had been misstatements and misrepresentations which entitled him to rescind the contract,

LIMITATION ACT, 1877—*continued.*

defendant would be barred by his laches from rescinding the contract, applies to the case. *Tennent v. City of Glasgow Bank, L. R, 4 Ap Cas, 615,* referred to. MOHUN LALL *v* SRI GANGAJI COTTON MILLS CO. . . . 4 C. W. N., 369

——— art. 115 (1871, art. 115).

1. ——— *Suit for breach of contract.*

damages falling under s. 1 of Act ... within the meaning of cl. 9 if the contract of lease was verbal, and within cl. 10 if it was in writing.

circumstances independently of any actual agreement. BROOKE *v.* GIBBON . . 19 W. R., 244

Upheld on review . . . 21 W. R., 47

2. ——— *Implied contract—Contract*

MUHAMMAD KHAN . . . 9 Bom., 280

3. ——— *Contract between doctor* ... When a doctor is engaged ... nt being ... an im... ich was ... under ... HUNDER

... R., 96

4. ——— *Suit for money received by*

that, if the defendant was in truth the ... agent, but had induced the plaintiff to make him so by the fraudulent representation that he was the

LIMITATION ACT, 1877—*continued.*

agent of the chitts, the cause of action would have arisen at the discovery of the fraud PENUBALLI SUBHARAMAREDDI *v.* BHIMARAJU RAMAYA [2 Mad., 21

5. ——— — *Contract to supply goods —Suit for balance due*—In a suit to recover a balance due for articles supplied to defendant on account current between the parties, where an oral contract existed to the effect that, on defendant's giving chittis as security, articles of food for daily consumption would be supplied to him from plaintiff's shop, the chittis to be returned to defendant at intervals after payment on presentation, it was found that plaintiff last, on the 1st Assar 1276, returned to defendant the unpaid chittis then on hand, but defendant did not pay their amount Subsequently, on different dates, he paid a portion. In a suit for what remained due,—*Held* that the breach of contract on which the suit was brought occurred when the defendant failed to pay, on presentation of the chittis, the amount then due and payable. RAM DOYAL KOONDOO *v* GOOROO DASS SEN [18 W. R., 450

6. ——— *Breach of contract in not satisfying decree—Cause of action*—Where *S*, for a valuable consideration, promised *K* to satisfy a de-

7.——— *Suit for trees on land after ejectment—Cause of action*—*A*, having been in possession of garden land from 1850 as tenant of *B* under a two years' lease, continued to occupy as yearly tenant till 1860, when he was ejected in

[illegible] Bom., A. C., [illegible]

8.——— *Suit on agreement to pay rent to creditor—Cause of action.*—Plaintiff executed a zur-i peshgi lease to defendant for a term of years, and arranged with him contemporaneously

9. ——— *Suit for abatement of rent founded on agreement for measurement—Payment of same rent—Abandonment.*—In a suit for abatement of rent founded on an agreement that at a certain time the land should be measured, and if

saying that the agreement was abandoned by the parties PROSUNNO MOYEE DOSSEE *v* DOYA MOYEE DOSSEE . . . . 22 W. R., 275

10 ——— *Sale of goods*

the suit was one for breach of contract and governed by cl 9, s 1, Act XIV of 1859 BAMA SOONDURY DEBIA *v.* JARDINE, SKINNER & CO. 9 W. R., 367

12. ——— *Suit for breach of contract to deliver goods.*—The defendants were owners of a fleet of steamers plying periodically along the coast of British India, by which they undertook to convey for freight parcels of goods indifferently from and to

ESACK & CO . . . I. L. R., 3 Mad., 107

13.——— and s. 61—*Agent for purchase of stores for Government, Suit by—Cause of action—Suit against Secretary of State—Acknowledgment—Act XV of 1877, ss. 19 and 20*—The

mination of the plaintiff's agency and more than

LIMITATION ACT, 1877—*continued.*

doubtful if art. 61 of the second schedule of Limitation Act would apply, as against the Secretary of State for India in Council, but even if not, the suit was barred by art. 115. DOYA NARAIN TEWARY v. SECRETARY OF STATE FOR INDIA

[I. L. R., 14 Calc., 256

14. ———— and art. 120—*Re-marriage of Hindu widow—Custom—Breach of contract.*—The plaintiff sued the defendant, who had married the plaintiff's deceased brother's widow, to recover, by way of compensation, the money expended by his deceased brother's family on his marriage, founding his claim upon a custom prevailing among the Jats of Ajmere, whereby a member of that community marrying a widow was bound to recoup the expenses incurred by her deceased husband's family

years. MADDA v. SHEO BAKSH

[I. L. R., 3 All., 385

15. ———— and art. 30—*Suit by consignee against railway company for non-delivery.*—Where a suit is brought against a railway company by the consignee of goods (not sent on sample or for approval) for compensation for non-delivery, the period of limitation is not two years (art. 30), but three years (art 115, sch. II of the Limitation Act, 1877), inasmuch as the consignor contracts with the company as agent for the consignee, and the property in the goods passes to the consignee on delivery to the company. HASSAJI v. EAST INDIAN RAILWAY COMPANY

[I. L. R., 5 Mad., 388

16. ———— and art. 30—*Bill of*

applicable, although the defendants were to prove that the breach occurred in consequence of some

107, approved. DANMULL v. BRITISH INDIA STEAM NAVIGATION COMPANY . I. L. R., 12 Calc., 477

17. ———— *Loan on verbal agreement to repay at a specified date.*—A suit to recover money lent with interest upon a verbal agreement

LIMITATION ACT, 1877—*continued.*

and not otherwise specifically provided for. RAMESHWAR MANDAL v. RAM CHAND ROY

[I. L. R., 10 Calc., 1033

18. ———— and art. 57—*Debt contracted to be payable at a future date.*—In a suit against the legal representative of a deceased debtor to recover the amount of the debt it appeared that the debt was contracted on 30th September 1885,

19. ———— *Suit on contract unregis-*

three, years from this day. The first plaintiff took this note to the defendant's firm, and in return received the following document addressed to himself, "You sent one chithi (note) for R7,000, namely seven thousand, on me. The sum which your father caused to be paid to you in respect of the ornaments appertaining to your marriage has been credited

that it was the intention of the parties that payment should not be made until the plaintiffs were prepared to purchase ornaments, and that until then the money should remain with the defendant's firm. The intention was that the money should not be paid until the plaintiffs required it for the purpose for.

applied to the case, and the suit was not barred. MANCHERJI BOMANJI v. NUSSERWANJI MANCHERJI

[I. L. R., 20 Bom., 8

LIMITATION ACT, 1877—*continued.*

20. ———— *Breach of contract—Cause of action—Damages* —In a suit for breach of a contract to be performed at different times, the period of limitation must be calculated from each breach of contract as it arises Where there is a contract for performing certain duties in each of several years, each breach of the contract is a complete cause of action, and damages are recoverable for each breach separately MATI SAHU v. FORBES

[B. L. R., Sup. Vol., 500: 6 W. R., Act X, 61

See the decision of the case by the Division Bench after the ruling of the Full Bench MOTEE SAHOO v. FORBES . . . 6 W. R., 278

On this clause *see* also LUKHINARAIN MITTER v KHETTRO PAL SING ROY

[13 B. L. R., P. C., 146: 20 W. R., 380

21. — — *Continuing breach—Contract* —*A* agreed with *B* to refund to *N* the price of certain property sold by *A* to *N*, and of which a share belonged to *B* *A* having died without fulfilling the agreement, *N* obtained against *B* a decree for possession of part of the property. Five years subsequent to *N*'s suit, *B*'s heirs sued *A*'s heirs for damages for breach of the agreement. *Held* that such breach of the agreement was a continuing breach, and had not even yet ceased, and that therefore the present suit was not barred by art 115, sch. II of the Limitation Act. IMDAD ALI v. NIJABAT ALI . . . I. L. R., 6 All., 457

22. ———— and s. 23—*Bond—Interest post diem—Non-payment of principal and interest at agreed date—Continuing breach—Successive breaches.*—Upon failure to pay the principal and interest secured by a bond upon the day appointed for such payment, breach of the contract to pay is committed, and there is no "continuing breach"

[illegible]

23. ———— *Breach of contract—Refusal to perform contract of sale—Cause of action —Suit for refund of money—Continuing breach* —

[illegible]

change of the revenue registry, *T* should return the purchase-money. *C* was put in possession, but in

[illegible]

———— art. 116.

See DEKKAN AGRICULTURISTS' RELIEF ACT, 1879, s 72I. L. R., 9 Bom., 320

1. ———— *Contract or engagement in writing* —Where a writing signed by the defendant was in these terms: "*S* (defendant) holds R475, which sum is the property of *L* (the plaintiff),"—*Held* that the document could not be considered a written contract or engagement. LAKSHMANAIYAN v. SIVASAMY ROW . . . 4 Mad., 216

2. ———— *Contract or engagement in writing—Suit on promissory note by endorsee against payee* —The defendant, the payee of a promissory note, endorsed it to the plaintiff. The endorsement was, "Pay to *K M* (plaintiff) or his order." The

[illegible]

See SHUMBO CHUNDER SHAHA v. BARODA SOONDUREE DEBIA . . . . 5 W. R., 45

3 ———— *Mode of registration—Registration before cazee* —The registration must be under one of the Registration Acts or Regulations. Attestation before a cazee was held not to be registration within cl 10, s. 1 of Act XIV of 1859 DOYAMOYEE DABEE v. NOBONEE DABEE . 1 W. R., 89

4 ———— [illegible]

[I. L. R., 3 All., 600

5. ———— *Registered instalment bond, Suit on—Contract in writing registered* —Art. 116

[illegible]

6. ———— *Registered bond—Compen-*

[illegible]

RAVJI . . . . I. L. R., 6 Bom., 75

7. ———— *Registered bond for the payment of money—Suit for compensation for the breach of a contract in writing registered.*—The defendant, having borrowed money from the plaintiff, gave him a bond, dated 4th July 1872, for the payment of such money, with interest, within two years, or on certain contingencies contemplated and defined in such bond Such bond did not specify a

[illegible]

LIMITATION ACT, 1877—*continued.*

within the scope of art. 66 of sch. II of Act XV of 1877, but one to which art. 116 of that schedule was applicable, and it might proceed on the plaint without any amendment thereof. GAURI SHANKAR v. SURJU . . I. L. R., 3 All., 276

8. ———— *Suit to recover money due on registered bond—Compensation for breach of contract.*—A suit to recover money due upon a registered bond is a suit for compensation for breach of contract in writing registered within the meaning of art 116 of sch. II to Act XV of 1877, and must be brought within six years from the time when the

[illegible]

[I. L. R., 6 Calc., 94]

9. ———— *Registered bond for the payment of money.*—*Held*, following *Husain Ali* [illegible]

[illegible]

due date is a suit for compensation explained by STUART, C.J., and *Nobocoomar Mookhopadhaya* v. *Siru Mullick, I. L. R., 6 Calc., 94*, referred to. KHUNNI v. NASIR-UD-DIN AHMAD

[I. L. R., 4 All., 255

10. ———— *Suit for money due on*

[illegible]

11. ———— *Registered bond executed by minor.*—A sum of money was advanced by the plaintiff to a minor who gave a bond for the amount and duly registered the same In a suit on the bond it was urged on behalf of the minor, who had not

[illegible]

for necessaries, effect must be given to the fact of registration, and the suit having been brought within six years from the date of the bond was not barred by

LIMITATION ACT, 1877—*continued.*

limitation, and the plaintiff was entitled to a decree SHAM CHARAN MAL v. CHOWDHRY DEBYA SINGH PAHRAJ . . . I. L. R., 21 Calc., 872

12. ———— *Suit on a registered bond, and for misappropriation by executor de son tort.*—In a suit on a registered bond payable in eleven yearly instalments to recover instalments 5 to 10 from the representatives of two deceased co-debtors (who as managing members of an undivided Hindu family had contracted the debt for family purposes), the plaintiff added as defendants *G*, the son-in-law of one of the deceased co-debtors, and his two brothers, on the ground that they, in collusion with the widow of such deceased, co-debtor, had as volunteers intermeddled with and possessed themselves of substantially the whole property of the family of the deceased co-debtor. The bond was dated 26th March 1870. The earliest instalment sued for fell due on 13th March 1874 *Held* that, as the bond was a registered bond and the property had been misappropriated within three years of the date of the suit, the suit was not barred by limitation. MAGALURI GURUDIAH v. NARYANA RUNGIAH . I. L. R., 3 Mad., 359

[illegible]

sch II, Act XV of 1877. Compensation is used in the same sense in that article as is the Contract Act, s. 73. VYTHILINGA PILLAI v. THETCHANAMURTI PILLAI . . . . I. L. R., 3 Mad., 76

14. ———— and art. 113—*Suit by mortgagor to recover money due on a registered mortgage-deed.*—A suit by a mortgagor to recover [illegible]

[illegible]

[I. L. R., ...]

15. ———— and art. 65—*Vendor and purchaser—Agreement by purchaser to refund purchase-money in case land sold proved deficient in quantity—Suit for refund—Suit for compensation for breach of contract.*—The vendor of certain land agreed in the conveyance, which was registered, that in case the land actually conveyed proved to be less than that purporting to be conveyed, he should make a

LIMITATION ACT, 1877—*continued.*

refund to the purchaser of the purchase-money in proportion to the value of the quantity of land deficient, the land actually conveyed having proved to be less than that purporting to be conveyed, and the vendor

that the suit was one of the nature described in art 65, sch. II of Act XV of 1877, to which, the agreement being in writing registered, the limitation provided by art. 116, sch. II of that Act, was applicable. *Held* by OLDFIELD, J., that art. 116, sch II of Act XV of 1877, was applicable to the suit KISHEN LAL v. KINLOCK

I. L. R., 3 All., 712

16. ——— *Suit for breach of contract in writing registered—Stipulation as to amount of profits of property sold* The plaintiffs purchased certain immoveable property from the defendants

of 1877, and not by art. 65. *Kishen Lal* v. *Kinlock, I. L. R., 3 All., 712,* referred to AMANAT BIBI v. AJUDHIA . . . I. L. R., 18 All., 160

17. ——— *Suit for arrears of maintenance—Suit on ekrar executed by priest of Hindu idol creating charge on offerings to idol—Right of priest to charao (offerings to idol)*—In a suit upon an ekrar executed by the priest of an idol for recovery of arrears of maintenance, and for a declaration that the money due was realizable from the surplus of the charao (offerings to the idol) and recoverable from the defendant's successors in office,—*Held* that the limitation applicable to the case was that prescribed by

padhaya v *Siru Mullick, I. L. R., 6 Calc., 94,* referred to. GIRIJANUND DATTA JHA v. SAILAJANUND DATTA JHA. I. L. R., 23 Calc., 645

18. ——— *Suit for rent—Registered*

the suit was not barred by limitation. AMBALAVANA PANDARAM v. VAGURAN . I. L. R., 19 Mad., 52

LIMITATION ACT, 1877—*continued.*

chase-money was paid The plaintiff and the defendant sued to recover possession, but failed on the ground that the vendor had no title The plaintiff now sued on 7th February 1895 to recover with interest the purchase-money and the amount of costs incurred by him in the previous litigation. *Held* that, the contract of sale being in writing and registered, the covenant which, under s. 55 of the Transfer of Property Act, the law implied, must be regarded

therefore the the plaintiff KRISHNAN

, 21 Mad., 8

20. ——— and art. 120—*Transfer of Property Act (IV of 1882), s. 68—Suit for*

sued in 1896 to recover the amount of the kanom.

21. ——— and arts. 89 and 90—*Principal and agent—Breach of contract—Account*

was employed is contained in a duly registered instrument. In a suit for compensation for breach

tion" seems to be used in the sense in which it appears in s. 73 of the Contract Act (IX of 1872). In April 1875, *A* entered into an agreement in writing with *B*, whereby he agreed to act as the manager of *B's* zamindaris and other landed pro-

22. ——— *Suit for arrears of rent—Registered contract.*—A suit to recover arrears of rent upon a registered contract is governed by sch. II

LIMITATION ACT, 1877—*continued.*

art. 116, of the Limitation Act. UMESH CHUNDER MUNDUL *v.* ADARMONI DASI

[I. L. R., 15 Calc., 221

23. ——— *Suit on bond.*—*A* sued as assignee of bond (payable in 1872), hypothecating land in the mofussil. *B*, *A*'s assignor, was a vakil practising in the High Court. *B* had obtained an assignment of the obligee's interest in the bond sued on, and also another bond for R3,000 between the same parties after the 1st July 1882, for R4,500 *B* had previously purchased the two bonds at a sale in execution of the decree of a mofussil Court for R5 each *A*'s assignment from *B* purported to be made to *A* in payment of certain debts owed to him by *B*. No interest had been paid on the bond, and no tender had been made to the plaintiff. *Held* in a suit brought in 1884 that the creditor's personal remedy was barred by art. 116 of the Limitation Act. RATHNASAMI *v.* SUBRAMANYA

[I. L. R., 11 Mad., 56

24. ——— *Damages for non-payment on due date—Charge on hypothecated property—Successive or continuing breaches of contract.*—Damages given after the due date of a mortgage for non-payment of the principal money upon the due date, are damages for breach of contract, and not interest payable in performance of a contract; and under art 116, sch. II of the Limitation Act (XV of 1877), a suit to recover such damages must be brought within six years from the time when the contract for the breach of which they are claimed was broken. It cannot be said that such damages are, from the date when the contract was broken, and even before they have been ascertained or decreed, a charge upon the property hypothecated, so as to [illegible] *Western* [illegible] *organ* v. [illegible] *Veguelin*, [illegible] *y, L. R.*, *14 Eq.*, [illegible] *Ap.*, *27*, and *Bishen Dyal* v *Udit Narayan, I. L. R., 8 All., 486*, distinguished. In such cases there is one [illegible]

[I. L. R., 11 All., 416

25. ——— *Interest on deed of conditional sale—Interest after date fixed for payment of principal and interest—Absence of agreement* [illegible]

[illegible] for interest after due date is a claim for compensation for breach of contract, and a suit for the recovery of such compensation must be brought within six years from the date of the breach. *Juggomohun Ghose* v *Manick Chand, 7 Moore's I. A., 279*, referred to. *Mansab Ali* v. *Gulab Chand, I. L. R., 10 All., 85*, and *Bhagwant Singh* v. *Daryao Singh, I. L. R., 11 All., 416*, approved of. *Bhagwan Lal* v.

LIMITATION ACT, 1877—*continued.*

Mohip Narain Singh, unreported, and *Golam Abas* v. *Mohamed Jaffer, I. L. R., 19 Calc., 23 note*, followed. GUDRI KOER *v.* BHUBANESWARI COOMAR SINGH . . . . I. L. R., 19 Calc., 19

GOLAM ABAS *v.* MAHOMED JAFFER

[I. L. R., 19 Calc., 23 note

26. ——— *Mortgage by conditional sale—Interest after due date—Interest Act (XXXII of 1839)—Limitation Act, art. 132—Transfer of Property Act, s 86.*—*Held* by a majority of the Full Bench (MACLEAN, C.J., O'KINEALY, J., and MACPHERSON, J.) that, when a [illegible]

the period of limitation in such a case; and therefore only six years' interest after the due date at 6 per cent. per annum is recoverable. The mortgagor cannot redeem until he has repaid the principal sum with such interest and costs. *Gudri Koer* v. *Bhubaneswari Coomar Singh, I. L. R., 19 Calc., 19*, approved *Mathura Das* v. *Narindar Bahadur Pal, I. L. R., 19 All., 39* · *L. R., 23 I. A., 138*; *Cook* v. *Fowler, L. R., 7 H. L., 27*, and *Bikramjit Tewari* v. *Durga Dyal Tewari, I. L. R., 21 Calc., 274*, referred to. *Held* (by TREVELYAN and BANERJEE, [illegible]

SINGH . . . . I. L. R., 24 Calc., 699
[1 C. W. N., 437

27. ——— *Suit on mortgage—Claim for interest post diem in absence of covenant—Claim in nature of damages.*—The defendants hypothecated to the plaintiff, to secure repayment of a [illegible]

before the 30th October of each year, and finally pay in full the principal amount on the 30th October [illegible]

for a personal decree was barred by limitation, but passed a decree directing the sale of the hypothecated land in default of payment of the principal together with interest up to date. On appeal,—*Held* that, since the instrument did not provide for interest *post diem*, any claim in the nature of a claim for such interest could be allowed by way of damages

LIMITATION ACT, 1877—*continued.*

only, and was not a charge on the land, and treating the claim as one for damages for failure to pay the principal on the 30th October 1878, such claim was barred by limitation under art 116, sch II of the Limitation Act. BADI BIBI SAHIBAL *v* SAMI PILLAI
[I. L. R., 18 Mad., 257

But *see* RAMA REDDI *v* APPAJI REDDI
[I. L. R., 18 Mad., 248

where interest *post diem* was allowed, though barred.

28. ———— *Suit for interest post diem in absence of covenant—Suit on mortgage.* —The plaintiff sued in 1893 to recover principal together with interest due up to date on a mortgage which provided for the repayment of principal and interest in December 1882, but contained no covenant for the payment of interest *post diem*. *Held* that the claim for interest *post diem* was barred by limitation THAYAR AMMAL *v* LAKSHMI AMMAL
[I. L. R., 18 Mad., 331

29. ———— *Claim for interest on money due under registered mortgage-deed—Interest Act (XXXII of 1839).*—Art 116 of sch II of Act XV of 1877 applies to a claim to have interest allowed under Act XXXII of 1839, in respect of the ...

[I. L. R., 17 All., 581

But *see* MATHURA DAS *v* NARINDAR BAHADUR
[I. L. R., 19 All., 39
L. R., 23 I. A., 138
1 C. W. N., 52

in which this decision was not approved of by the Privy Council.

30. ———— *Building lease—Coal* ...

31. ———— *Suit between partners—Registered partnership deed.*—The plaintiffs and the defendants entered into a partnership agreement, ...

art. 116. ... [I. L. R., 14 Mad., 465

32. ———— and s. 106—*Suit for an account of a dissolved partnership—Registered* ...

PONNAYYA . . . I. L. R., 22 Mad., 14

———— arts. 118, 119 (1871, art. 129).

See DECLARATORY DECREE, SUIT FOR—ADOPTIONS . I. L. R., 1 Bom., 248

Under the Act of 1859, a suit simply to set aside an adoption was governed by cl 16 of s. 1, and in some cases the cause of action was held to arise at the date of the adoption.

See MRINMOYEE DABEE *v.* BHOOBUNMOYEE DABEE
[15 B. L. R., 1: 23 W. R., 43

and KALOVA KOM BHUJANGRAY *v.* PADAPA WALAD BHUJANGRAY . . I. L. R., 1 Bom., 248

In another case, the cause of action was held to accrue on the death of the adoptive mother, and not at the date of the adoption. TARINI CHURN CHOWDHRY *v.* SARODA SUNDARI DASI
[3 B. L. R., A. C., 145: 11 W. R., 468

...

ISWAR CHANDRA MITTER *v.* SHAMA SUNDARI DASI
[3 B. L. R., A. C., 150 note

RADHA KISSOREE DOSSEE *v.* GUTHEE KISSEN SIRCAR . . . . W. R., 1864, 272

In HURONATH CHOWDHRY *v* HURRE LALL SHAHA . . . . . 11 W. R., 477

...

1. ———— *Suit to set aside adoption —Ignorance of adoption or its validity—Cause of* ...

See contra, RADHAKISSEN MAHAPATTER *v.* SREEKISSEN MAHAPATTER . . . 1 W. R., 62

2. ———— *Act IX of 1871, sch. II, art. 129—Suit to establish or set aside adoption —* ...

LIMITATION ACT, 1877—*continued.*

date of the death of the adoptive father," does not interfere with the right which, but for it, a plaintiff has of bringing a suit to recover possession of real property within twelve years from the time when the right accrued. RAJ BAHADUR SINGH *v.* ACHUMBIT LAL . . L. R., 6 I. A., 110 : 6 C. L. R., 12

3. ———— *Suit to set aside adoption.* —Plaintiff sued in 1877 to set aside an adoption which

ity of *Raj Bahadur Singh v. Achumbit Lal, L. R.,*

4. ———— *Suit to obtain a declaration that an alleged adoption is invalid or never took place—Suit for possession of immoveable property —Act XV of 1877, sch. II, art. 141.*—Art. 118 of the Limitation Act applies only to suits where the relief claimed is purely for a declaration that an alleged adoption is invalid or never in fact took place. Such a suit is distinct from a suit for possession of property, and the latter kind of suit cannot be held to be barred

has not sued for a declaration should not be a bar to a suit for possession of property on any ground of limitation prescribed for the former. BASDEO *v.* GOPAL . . . . I. L. R., 8 All., 644

5. ———— *Act IX of 1871, art. 129— Meaning of "suit to set aside adoption."*—Art. 129 of sch. II of Act IX of 1871, the Indian Limitation Act of that year, using the expression "suit to set aside an adoption," denoted a suit bringing the validity of an adoption into question, and the rule of limitation given by that article applied to all suits in

though less than twelve years after the plaintiffs' titles (if any) had accrued at the death of the surviving widow, that the suits were barred under art. 129

LIMITATION ACT, 1877—*continued.*

ROY CHAODHRI SARODA MOHUN ROY CHAODHRI *v.* DAKHINA MOHUN ROY CHAODHRI
I. L. R., 13 Calc., 308
L. R., 13 I. A., 84

6. ———— *Suit questioning an adoption—Invalidity, by Hindu law, of second adoption.* —An adopted son, proprietor in possession of half of the estate of his adoptive father, deceased, sued to obtain the other half which was in the defendant's possession. The defence was that the latter was en-

the cause of suit had arisen. *Jagadamba Chow-*

referred to. It was nevertheless clear that, if this suit had not been barred, the second adoption could not have been held valid under Hindu law as an adop-

MOITRA . . . I. L. R., 20 Calc., 491
L. R., 20 I. A., 30

that claim, was not barred by limitation. SRINIVASA *v.* VENKATRAMANA . I. L. R., 5 Mad., 131

8. ———— *Suit for declaration that*

shown that the alleged adoption became known to the plaintiff before 1881,—*Held,* with reference to art. 118 of sch. II of the Limitation Act (XV of 1877), that the suit was within time. *Jagadamba Chaodhrani v. Dakhina Mohun Roy Chaodhri, I. L. R., 13 Calc., 308,* distinguished. GANGA SAHAI *v.* LEKHRAJ SINGH . . I. L. R., 9 All., 253

9. ———— *Suit for possession where adoption is set up—Hindu law, Adoption.*—Against

LIMITATION ACT, 1877—*continued.*

a claim for the proprietary right by inheritance brought by the nearest bandhu, or cognate heir, of the deceased, the defendant in possession set up his adoption by the widow under her husband's authority. The Courts below had found that no such authority had been given, and that the widow, not adopting to her husband, had adopted the defendant as her son. *Held* that on the facts found, this was not a suit to which limitation under art 118, sch II Act XV of 1877, was applicable LACHMAN LAL CHOWDHRI v. KANHAYA LAL MOWAR . I. L. R., 22 Calc., 609
[L. R., 22 I. A., 51

10. — — *Suit for possession of property incidentally necessitating the setting aside of, or declaration of invalidity of, an adoption* —Art. 118 of sch II of the Indian Limitation Act applies only to suits for a declaration that an adoption is

[illegible]

All., 485, *Padajirav* v. *Ramrav*, *I. L. R.*, 13 *Bom.*, 160; and *Lala Parbhu Lal* v. *Mylne*, *I. L. R.*, 14 *Calc.*, 401, referred to. NATTHU SINGH v. GULAB SINGH . I. L. R., 17 All., 167

11. — *Suit for possession by Hindu widow as heiress—Defendant in possession under an alleged adoption* —A Hindu died in 1884, leaving the plaintiff, his widow, and certain landed and other properties The defendant claimed, to the knowledge of the plaintiff in 1885, to have been adopted

[illegible]

12 — *Suit for possession of immoveable property by a Hindu, on the allegation that he was the reversionary heir by adoption of*

[illegible]

to a suit for a declaratory decree as to the validity of

LIMITATION ACT, 1877—*continued.*

Ramrav, *I. L. R.*, 13 *Bom.*, 160, *Fannyama* v. *Manjaya Hebbar*, *I. L. R.*, 21 *Bom.*, 159, and *Hari Lal Pranlal* v. *Bai Rewa*, *I. L. R.*, 21 *Bom.*, 376, referred to. JAGANNATH PRASAD GUPTA v. RUNJIT SINGH . I. L. R., 25 Calc., 354

13. — *Suit for possession of immoveable property on a declaration that an adoption is invalid.*—Art. 118, sch II of the Limitation Act, does not apply to a suit for possession of immoveable property, though it may be necessary for the plaintiff to prove the invalidity of an adoption. *Jagannath Prasad Gupta* v. *Runjit Singh*, *I. L. R.*, 25 *Calc.*, 354, referred to. RAM CHANDRA MUKERJEE v. RANJIT SINGH
[I. L. R., 27 Calc., 242
4 C. W. N., 405

14. — *Suit to recover possession of immoveable property by setting aside adoption.* - An adoption was made by *M*, a Hindu widow, to her husband *J* in 1854, when the plaintiff's father, the then nearest reversionary heir to *J*, was

[illegible]

majority on the 28th July 1894, having been born on the 29th July 1873 The plaintiff brought the present suit against the defendant, on the 28th

[illegible]

15 — and arts 119 and 141—

[illegible]

LIMITATION ACT, 1877—*continued.*

balance from the persons and other properties of the

did not contemplate a second suit being instituted to recover the balance from the persons of the mortgagors in the event of the first remedy against the mortgaged property proving insufficient to pay the debt in full, and consequently that the cause of action against the persons of the mortgagors accrued upon the date on which the mortgage-money became due; and as the suit was instituted more than six years after that date, the plaintiff's claim was barred by limitation, so far as the personal liability of the mortgagors was concerned MILLER v. RUNGA NATH MOULICK . . . I. L. R., 12 Calc, 389

See CHATTER MAL v. THAKURI
[I. L. R., 20 All., 512

and KAMALA KANT SEN v. ABUL BASKAT
[I. L. R., 27 Calc., 180

14. ——— *Suit to recover non-hereditary office—Karnam.*—The plaintiff's adoptive father was dismissed from the office of karnam on the 4th of April 1862, and the plaintiff was appointed in his stead on the 29th April 1865. On the 25th September 1865, the plaintiff was dismissed and the second defendant appointed. The present suit for recovery of the office and land attached was filed on 21st September 1877. *Held*, on the authority of

[I. L. R., 2 Mad., 283

15. ——— *Suit to oust a shebait from*

provided, and is therefore governed by art 120 of sch. II of the Limitation Act. JAGAN NATH DAS v. BIRBHADRA DAS . I. L. R., 19 Calc, 776

16. ——— *Time from which period of limitation begins to run—Mortgage by conditional s*

by cond

closure

1875.

sale had not accrued until the mortgagee had obtained the decree of April 1881 declaring the conditional sale absolute and giving him possession. *Rasik Lal* v. *Gajraj Singh, I. L. R., 4 All., 414,* and *Prag Chaubey* v. *Bhajan Chaudhri, I. L. R., 4 All., 291,* referred to UDIT SINGH v. PADARATH SINGH
[I. L. R., 8 All., 54

17. ——— *Share of undivided mehal—Conditional sale.*—The limitation applicable to a suit to enforce a right of pre-emption in respect of a conditional sale of a share of an undivided mehal is that contained in art. 120, sch. II of Act XV of 1877, *viz.*, six years. NATH PRASAD v. RAM PALTAN RAM . . . . I. L. R., 4 All, 218

ASHIK ALI v. MATHURA KANDU
[I. L. R., 5 All., 187

18. ——— *Mortgage by conditional*

Prasad v. *Ram Paltan Ram, I. L. R., 4 All., 218,*

SINGH . . . . I. L. R., [illegible]

19. ——— *Suit for pre-emption—Rival pre-emptor impleaded as defendant.*—Two

ALI

20. ——— *Beng Reg. No XVII of*

remained unpaid.—*Held* in a suit for [illegible]

Buddree Doss v. *Durga Parshad, 2* [illegible]

LIMITATION ACT, 1877—*continued.*

Tara Kunwar v. *Mangri Meeah, 7 B. L. R., Ap., 114, Hazari Ram* v. *Shankar Dial, I. L. R., 3 All., 770, Tawakkul Rai* v. *Lachman Rai, I. L. R., 6 All., 344* and *Ajodh Nath* v. *Mathura Prasad, I. L. R. 11 All., 164,* referred to. *Prag Chauley* v. *Bhajan Chaudhri, I. L. R., 4 All., 291, Rasik Lal* v. *Gajraj Singh, I. L. R., 4 All., 414,* and *Udit Singh* v. *Padarath Singh, I. L. R., 8 All., 54,* overruled. ALI ABBAS *v.* KALKA PRASAD

[I. L. R., 14 All., 405

21. ———— *Suit for pre-emption—Mortgage by conditional sale—Transfer of Property Act (IV of 1882), ss. 86 and 87.*—A plaintiff sued for pre-emption, his claim arising out of the foreclosure of a mortgage by conditional sale of a share in an undivided zamindari village. *Held* that the limitation applicable to the suit was that prescribed by art. 120 of sch. II of Act XV of 1877, and that limitation began to run from the date when the mortgagee

359, referred to. RAHAM ILAHI KHAN *v.* GHASITA

[I. L. R., 20 All., 375

22. ———— and art. 73—*Promissory*

ERRAPA I. L. R., 6 Mad., 290

23. ———— *Suit for refund of money paid on decree afterwards reversed.*—*A* got a decree against *B* for rent at an enhanced rate, on the 29th of June 1863, which decree was affirmed both in regular and special appeal, but was reversed by the

24. ———— *Suit for money paid under a decree on reversal of the decree.*—In a suit of 1867 the present defendant obtained a decree for possession of a certain village and mesne profits for one year.

mesne profits for subsequent years; but an appeal

LIMITATION ACT, 1877—*continued.*

the decree out of Court. In second appeal, however, the High Court, on 26th September 1881, reversed the decree of the District Court, whereupon the present plaintiff applied for restitution under Civil Procedure Code, s. 583, which application was ultimately disallowed. The *present suit was brought* to recover the amount to which that application related. *Held* that the Limitation Act, sch. II,

25. ———— *Contribution, Suit for—Liability created by ikrarnama—Suit upon a covenant in the ikrarnama for money paid—Cause of action.*—A suit upon a covenant in an ikrarnama

BHUTTACHARJEE *v.* NOBO KUMAR BHUTTACHARJEE

[I. L. R., 26 Calc., 241

26. ———— *Suit for recovery of instalment of professional tax—Towns Improvement Act, Madras (III of 1871).*—A suit for recovery of instalments of profession tax under the provisions of the Madras Towns Improvement Act, 1871, is governed by art. 120, sch. II of the Limitation Act. PRESIDENT OF THE MUNICIPAL COMMISSION GUNTUR *v.* SRIKAKULAPU PADMARAZU

[I. L. R., 3 Mad., 124

27. ———— *Claim to compel tenant to remove trees.*—Art. 120, Act XV of 1877, applies to an alternative claim put forward in a suit for ejectment, to compel the defendant to remove trees from lands leased to him for agricultural purposes. GONESH DOSS *v.* GONDOUR KOORMI

[I. L. R., 9 Calc., 147 : 12 C. L. R., 418

28. ———— *Suit for exclusive right to worship.*—A suit for an exclusive right to worship an idol is governed by art. 118 of Act IX of 1871. ESHAN CHUNDER ROY *v.* MONMOHINI DASSI

[I. L. R., 4 Calc., 683

29. ———— and art. 11—*Order disallowing claim—Civil Procedure Codes (Act VIII*

LIMITATION ACT, 1877—*continued.*

of 1859), s. 246, and (Act X of 1877) ss. 97-371.—The defendants attached certain property, which the plaintiffs alleged belonged to them. The plaintiffs preferred a claim to the property under s. 246 of Act VIII of 1859, this claim was disallowed on the 15th August 1877. In June 1878 the plaintiffs brougt a suit to establish their title to the property attached, and for confirmation of possession. Pending this suit, the principal defendant died, and the plaintiffs applied for an order to substitute certain persons as defendants The Court thereupon directed the issue of a summons on the defendants proposed

did not apply, but that art. 120 of sch. II was applicable. BISSESSUR BHUGUT *v.* MURLI SAHU [I. L. R., 9 Calc., 163 : 11 C. L. R., 409

See GOPAL CHUNDER MITTER *v.* MOHESH CHUNDER BORAL [I. L. R., 9 Calc., 230 : 12 C. L. R., 139

30.———— *Suit after release from attachment*—*A* and *B*, in execution of a decree obtained on the 16th January 1877 by them against *C* for rent, obtained possession of certain

decree to the plaintiff, who again attached the pro-

Act, and that the suit was not barred. BROJO MOHUN BHUTTO *v.* RADHIKA PROSUNNO CHUNDER [13 C. L. R., 139

31. ———— and art. 61—*Money*

January 1883 On the 5th February 1884 the shroff sued *T*, the heirs of the third party and another person (who owned to having received some of the money from *T*), to recover the sum he had been compelled to pay under the decree of 1878. *Held*

LIMITATION ACT, 1877—*continued.*

32. ———— *Express trust—Administration suit—Executor—Suit for an account against an executor or his representative.*—*R* died in 1865, leaving a will, of which his nephews *P* and *S* were the executors. His will provided that after payment of all debts, etc., the residue of his property should remain in the hands of the executors, who

possession of the estate, and died on the 10th January 1876. *S* remained passive until the 27th August 1884, when he took out probate of *R*'s will. On the 23rd January 1885, he filed the present suit against the defendant as widow and administratrix of *P*, praying for an account of the estate of *R* that had come to the hands of *P*, and also for an account of the estate of *P*. The plaintiff contended that *R*'s estate came into the hands of *P* as a trustee; that the suit was to recover the property for the purposes of the trust, and that s. 10 of the Limitation Act (XV of 1877) applied. The defendant alleged that all the moneys belonging to *R*'s estate, which had come into the hands of *P*, had been expended in paying *R*'s debts, and that there was no residue left for the purposes of the trusts of the will, and she contended that the suit was barred by limitation. *Held* that the suit was barred by art. 120 of sch. II of the Limitation Act (XV of 1877), being primarily not a suit to follow trust property in the hands of a representative of a trustee, but really to ascertain whether any trust remained to be administered after the testator's debts and funeral expenses had been paid No breach of trust was alleged. The suit was merely for an account against the executor or his representative To such a suit s. 10 of the Limitation Act does not apply. SHAPURJI NOWROJI POCHAJI *v.* BHIKAIJI . . I. L. R., 10 Bom., 242

33. ———— *Company, Winding up*—

company was ordered to be wound up by the Court, and an official liquidator was appointed. On the 17th March 1886, the official liquidator filed this suit against the defendant, who was a holder of twenty-one shares in the company, to recover (along with other calls) the amount of the said call of 1st October 1882. As to this part of the claim, the defendant pleaded limitation. *Held* that the suit being brought, not by the company, but by the liquidator, art. 120 of the Limitation Act (XV of 1877) applied, and

LIMITATION ACT, 1877—*continued.*

that the claim was therefore not barred. PARELL SPINNING AND WEAVING COMPANY *v.* MANEK HAJI [I. L. R., 10 Bom., 483

34. ——— and arts. 48 and 60—
Suit for right to follow goods in hands of agent made liable for conversion.—The defendant as an agent sold goods entrusted to him by his principal, who died after a decree had been made against him

dishonest misappropriation or conversion, nor art. 60 of the same schedule, fixing the limitation of three years to suits for "money payable by the defendant to the plaintiff," and to suits "for money received to the plaintiffs' use," were applicable to the present suit, but that, as a suit for which no period of limitation was provided elsewhere, it fell within art. 118 of the same schedule, fixing for such suits the limitation of six years. GURUDAS PYNE *v.* RAM NARAIN SAHU

[I. L. R., 10 Calc., 860 : L. R., 11 I. A., 59

35 ——— and arts. 62 and 89—
Suit against trustee for possession of share, and for account and recovery of profits.—M and S purchased certain property jointly in 1865, and had equal interests in it till 1868, when M's interest was reduced to one-third. S paid the entire purchase-money in the first instance, and incurred expenses in conducting suits for possession of the

trust property and to recover what might be due. *Guru Das Pyne v. Ram Narain Sahu, L. R., 11 I. A., 59 I. L. R., 10 Calc., 860,* referred to *Held* also that art. 120 of sch. II of the Limitation Act

36.——— — and s. 14 and art. 127—
Dismissal of former suit on substantive ground of failure to establish cause of action—Claim by contributors to a common fund.—An agreement was entered into between an uncle and his nephews in 1879 that their earnings should be put into a common fund, which fund should be utilized for family requirements. No provision was, however, made for the division of any surplus that might arise The agreement was acted upon until 1894, by which time a sum of R37,723-8-0 had accumulated. Upon a claim being made by the nephews in 1894 for a distribution of this fund, the uncle denied their right to participate in it. The uncle, who was working in partnership with others, in the same year, 1894, instituted a suit against his partners for an account and for his share of profits. He claimed the said accumulated fund of R37,723-8-0 as his share. While his suit was pending, namely, in Decem-

a suit against their uncle the said first defendant,

for himself alone and had not brought the proper parties before the Court. In plaintiffs' suit, the latter were declared to be entitled to shares in the said sum as prayed. First defendant appealed in both suits, judgment being given by the Appellate Court on 19th October 1897. In the suit in which

limitation. *Held* further that the claim was not barred by limitation. The title of the nephews was not based on contract, express or implied, but arose out of the fact that they were contributors to a common fund, which the Court was now asked to distribute. The claim was one which the Court must deal with on equitable principles, and apart from any question of partnership or of contract, and was consequently one to which art. 120 of the Limitation Act applied. Also, that the question was not one relating to joint family property within the meaning of art. 127. *Rani Mewa Kuwar v. Rani Hulas Kuwar, 13 B. L. R., 312,* referred to. COMMERCIAL BANK OF INDIA *v.* ALLAYOODEEN SAHEB . . . I. L. R., 23 Mad., 583

37. ——— and arts. 62 and 132—
Suits for "haq-i-chaharam" based on custom.—C,

LIMITATION ACT, 1877—*continued.*

Held that
a suit was
of 1877,
schedule.

KIRATH CHAND *v.* GANESH PRASAD
[I. L. R., 2 All., 358

38. ———— and art. 106—*Suit to wind up partnership.*—*T, B, R,* and *W,* the owners of a certain estate in equal shares, in 1863 entered into a partnership for "the cultivation of tea and other products" upon such estate. In 1864 *H, E,* and *I* joined the firm. In 1870 *H* died, and in 1871 *T* purchased his share and those of *E* and *I,* and in 1873 that of *R.* In 1875 *T* gave the Delhi and I
afterwards
in execution
estate were
purchased by the Bank, who obtained possession in August 1877. In August 1879, *B* and *W*'s executor sued *T* and the Bank claiming a declaration that they had been partners with *T* in the estate; that if the

1877, but that in either case the suit was within time, as the partnership was dissolved and consequently time began to run not from the death of *H* or the

39. ———— and arts. 131, 144—*Adverse possession—Suit for declaration of right to malikana and to set aside order refusing to register names.*—Previous to 1825, dearah X accreted to mouzah Y, and some time before 1860 the malik of Y executed two conveyances in favour of *A* and *B* respectively. In 1860 *A* sued *B* in the Munsif's

the Civil C
sequently
sought to

LIMITATION ACT, 1877—*continued.*

the same malikana, but they were opposed by *E,* who alleged that *A* had been acting throughout as his benamidar. The Collector referred the case under s. 55 of Act VII of 1876 to the Civil Court, and the application of *C* and *D* was eventually disallowed. *C* and *D* thereupon, on the 5th November 1880, instituted the present suit against *E* in the Court of the Subordinate Judge, for a declaration of their
of the order
registered in
as barred by
art. 120,
V of 1877),

because—(1) there being no allegation of dispossession, if it were contended that the suit was one for possession of an interest in immoveable property, art. 144 would apply; (2) if it were contended that the suit

possession as far as possession could be taken of such
taken by
taken
ling for
efusing
nt suit,
barred,
held to apply

[I. L. R., 10 Calc., ...

by limitation. GOUR MOHUN GOULI *v.* DINONATH KARMOKAR . . I. L. R., 25 Calc., 49
[2 C. W. N., 76

41. ———— *Suit on written instrument which could not have been registered—Limitation Act, 1859, s. 1, cls. 9, 10, 16.*—The period of

LIMITATION ACT, 1877—*continued.*

execution of such instruments was six years under cl. 16 of s. 1 of the said Act. VENKATACHALAM v VENKATAYYA . . I. L. R., 11 Mad., 207

42. ——— *Act XIII of 1859, s. 2—Claim to recover an advance.*—Act XIII of 1859 being a penal enactment, the Limitation Act (sch. II, art 120) is no bar to a claim under s. 2 to recover an advance made to a labourer. IN RE KITTU
[I. L. R., 11 Mad., 332

43. ——— *Suit for removal of trees.* —A suit by a zamindar for removal of trees planted in certain waste land of his village by persons who have no right to plant them is governed by art. 120, sch. II of the Limitation Act, and not by art 32, sch II of the Act. Where a defendant having a right to use property for a specified purpose perverts it to other purposes and a suit has to be instituted for any relief in respect of any injurious consequences arising from such perversion, such a suit will be governed by [illegible]

[illegible]

44. ——— and art. 10—*Mahomedan law—Pre-emption—Conditional sale—Right of pre-emption among co-parceners—Private partition of pattidari estate.*—*A* and *B* had certain proprietary rights in an 8-anna patti of a certain mehal. *C* and *D* had no rights in that patti, but *D* had a small share in the remaining 8 annas patti A private partition between the pattis having taken place, *C* and *D*'s brother lent to *B* two sums of R200 and R199 by deeds of bai-bil-wufa dated the 12th and 21st June 1876 *C* and *D* subsequently instituted foreclosure proceedings, and on the 5th May 1884 were put into possession of *B*'s share in the first-mentioned patti in execution of a decree which they had obtained. On the 18th April 1885 *A* sued *C* and *D* to enforce his right of pre-emption *Held* that the suit was not barred by limitation, it being governed by either art 10, sch. II of the Limitation Act (Act XV of 1877), which gave the plaintiff a [illegible]

45. ——— and art. 91—*Suit for declaration of title—Incidental relief—Setting aside instrument* - The period of limitation for suits to declare title is six years from the date when the right accrued, under the Limitation Act, 1877, sch II, art. 120; and this period is not affected by art. 91, though the effect of the declaration is to set aside an instrument as against the plaintiff. PACHAMUTHU v CHINNAPPAN
[I. L. R., 10 Mad., 213

46. ——— *Khoti Act (Bom Act I of 1880), s. 16—Settlement—Register, Preparation of—Entry in the register.*—On 28th April 1888, the Survey officer, after determining the co-sharers in a khoti village, prepared the settlement register under s. 16 of Bombay Act I of 1880, in which he entered the names of defendants as mortgagees of a certain [illegible]

defendants, who denied plaintiff's title, and was finally rejected by the Collector on 25th November 1892 In 1896 plaintiffs filed the present suit to cancel the entry in the register and for a declaration of their own title. *Held* that the suit was not time-barred The cause of action accrued on 15th October 1892, when defendants denied plaintiffs' title, and not on 29th April 1888, when defendants' names were entered in the register as mortgagees. DATTATRAYA GOPAL v. RAMCHANDRA VISHNU
[I. L. R., 24 Bom., 533

47. ——— and art. 127—*Suit for partition and account of joint property*—In a suit commenced in 1865 by a member of a joint family for the declaration of his rights, partition not being claimed, the order of Her Majesty in Council (1879) directed that the talukhdar should cause and allow the villages forming the talukhdari estate and the proceeds thereof to be managed and applied according to the trust declared in favour of the members of the family. The plaintiff in that suit afterwards obtained entry of his name as a co-sharer in the villages in the register kept under Act XVII of 1876, s. 56, and then on 14th December 1880 [illegible]

art. 120, and must be decreed. PIRTHI PAL v. JOWAHIR SINGH . I. L. R., 14 Calc., 493
[L R., 14 I. A., 37

48. ——— *Suit for perpetual injunction*—In a suit for a perpetual injunction to restrain the defendant from preventing the plaintiff from entering a certain house it was alleged that the defendant had been in exclusive possession for more than six years before suit *Held* that Limitation Act, sch II, art 120, applied to the suit, which was therefore barred by limitation. KANAKASABAI v MUTTU . . . I. L. R., 13 Mad., 445

49. ——— *Suit for mutation of names in register.*—A suit by a purchaser against his vendor to compel mutation of names in the [illegible]

50. ——— *Suit by a reversioner for a declaration of his title to property sold in execution of a decree against a Hindu widow—Cause of*

LIMITATION ACT, 1877—*continued.*

action.—*D* died leaving him surviving a widow and a daughter who was plaintiff's mother. Defendant No 2 obtained a decree against the widow, and in execution put up *D's* property to sale. Defendants 3, 4, and 5 purchased the property and took possession in 1869. In 1883 the plaintiff sued as *D's* reversionary heirs for a declaration that they were entitled to the property in dispute on the widow's

action giving any reversioner the right to sue for a declaration was that given to the plaintiff's mother in 1869, both by the sale and the dispossession, and it was not revived in favour of the plaintiffs on her death in 1879. All right to sue for a declaration was therefore barred in 1875 under art. 120 of sch. II of the Limitation Act (XV of 1877). CHHAGANRAM ASTIKRAM *v.* BAI MOTIGAVRI [I. L. R., 14 Bom., 512

51. ——————— *Suit by reversioners to set aside alienation by Hindu widow—Similar suit barred by limitation as against a prior reversioner, Effect of, on suit by subsequent reversioner.*—Where there are several reversioners entitled successively under the Hindu law to an estate held by

right of the nearest reversioner for the time being to contest an alienation or an adoption by the Hindu widow is allowed to become barred by limitation as against him, this will not bar the similar rights of the subsequent reversioners. *Beni Prasad* v. *Hardai Bibi, unreported*, *Ramphal Rai* v. *Tula Kuari, I. L. R., 6 All., 116*, *Jumoona Dassya Chowdhrani* v. *Bamasoonderai Chowdhrani, I. L. R., 1 Calc., 289 L. R., 3 I. A., 72*, and *Isri Dut Koer* v.

52. ——————— *Suit for a declaration of heirship—Accrual of the cause of action—Denial of title.*—*A* sued for a declaration that she was the daughter of *B*, who died in 1870. On *B's* death,

LIMITATION ACT, 1877—*continued.*

art. 120 of the Limitation Act. TUKARAI *v.* VINAYAK KRISHNA KULKARNI . I. L. R., 15 Bom., 422

53. ——————— *Suit by a decree-holder against the sons of a deceased judgment-debtor whose property had passed to them.*—A decree was

54. ——————— *Suit by the purchaser in*

question. It appeared that in 1888 the son of the

IMAMSAHIB . . . I. L. R., 18 Mad.,

55. ——————— *Right of suit—Continuing right—Suit for construction of will—Suit for*

relief of such a nature cannot be held to be barred so long as the right to the property in respect of which the declaration is sought is a subsisting right, and the plaintiff has a subsisting right

LOLIT MOHAN ROY . I. L. R., 20 Calc.,

56. ——————— and s. 10 and art. 62 —*Act XI of 1859, s 31—Suit to recover surplus sale-proceeds of a sale for arrears of Government revenue.*—In a suit brought for the residue of the sale-proceeds of an estate sold under the provisions of

LIMITATION ACT, 1877—*continued.*

Act XI of 1859 against the Secretary of State for India in Council, the defence was raised that the suit was barred under art. 62 of sch. II of the Limitation Act (XV of 1877) *Held* by the Full Bench that art. 62, sch. II of the Limitation Act, did not apply, and that the case was governed by art. 120. *Held* by PIGOT, J., that the sale-proceeds ...
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tary
... overruled. SECRETARY OF STATE FOR INDIA *v.* GURU PROSHAD DHUR ABDUL BARI *v.* SECRETARY OF STATE FOR INDIA. SECRETARY OF STATE FOR INDIA *v.* RAMTULLUB DAS CHOWDHRY . . . I. L. R., 20 Calc., 51

See SECRETARY OF STATE FOR INDIA *v.* FAZAL ALI [I. L. R., 18 Calc., 234

57. ———— and s. 10 and arts. 124 and 144—*Suit by a uralan against an agent of a devasom—Repudiation of agency.*—In 1873 a predecessor of the plaintiff ...
of a c ...
Court ...
to be ...
disput ...
that he ...

... as such agent property of a ...

... I. L. R., 16 Mad., 456

58. ———— and s. 23 and arts. 34, 35—*Suit for restitution of conjugal rights.*—It is not necessary, as a condition precedent to a suit for the restitution of conjugal rights or for the recovery of a wife who has deserted her husband, the parties being Hindus, that there should be any ...

... limitation applicable to suits of the present nature is that of art. 120 of sch II read with s 23 of the Limitation Act BINDA *v.* KAUNSILIA I. L. R., 13 All., 126

59. ———— *Suit for nullity of Parsi marriage*—A suit by a Parsi girl for a declaration of nullity of marriage was held to be governed by art. 120 of the Limitation Act, and being brought within three years of her attaining majority, it was not barred BAI SUNIBAI *v.* KHARSHEDJI NASARVANJI MASALAVALA . I. L. R., 22 Bom., 430

60. ———— and arts. 49 and 123—*Suit by Mahomedan widow to have declared her right by local custom to life interest in estate of her husband—Suit for distributive share of property—Suit for moveable property wrongly taken.*—To a suit by a Mahomedan widow against the brother of her deceased husband to have declared her right to possess for life the estate of the latter in accordance with a proved local custom, art. 120, sch. II, Limitation Act (XV of 1877) was ... applicable ...
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of ... applicable. MAHOMED RIASAT ALI *v.* HASIN BANU . . I. L. R., 21 Calc., 157 [L. R., 20 I. A., 155

61. ———— *Suit to recover from the widow of a deceased Mahomedan money realized by her on account of a debt due to the deceased.*—*Held* that a suit brought by the other heirs to recover from the widow of a deceased Mahomedan a sum of money said to have been realized by her on account of a mortgage debt due to her deceased husband was a suit to which the limitation applicable was that prescribed by art. 120 of ...

... I. L. R., 19 All., 169

62. ———— and art. 62—*Suit by purchaser of decree to recover money of deceased judgment-debtor in the hands of his agent*—One *A P*, having certain moneys lying at his credit in Calcutta, empowered *A L* to receive the same and hold them on his behalf *A P* died ...

... moneys in the hands of *A L* to the plaintiffs, who sued to obtain the same from *A L.* *Held* that the period of limitation applicable to such a suit was that prescribed by ...

[I. L. R., 13 All., 368

63. ———— and art. 62—*Money received for plaintiff's use—Suit for* ...

... the land was liable to be sold in execution, and obtained a decree. Meanwhile the land was taken up by Government under the Land Acquisition Act, and the compensation-money was paid to *C.* *A* attached this sum as a debt due to *B* and sold it in execution, and it was purchased by the plaintiff. The plaintiff now sued *C* to recover the amount of the debt. *Held* that the

LIMITATION ACT, 1877—*continued.*

suit was governed by Limitation Act, sch. II, art. 120, and not by art. 62, and that the plaintiff was entitled to recover without regard to the terms of Transfer of Property Act, s. 135. KRISHNAN *v.* PERACHAN . I. L. R., 15 Mad., 382

64. ——————— and art. 91—*Suit for declaration of right by setting aside kanom mortgage.*—The reversionary heirs to a stanom in Malabar sued in 1889 for a declaration that a kanom executed in 1881 by the first defendant, the present holder of the stanom, in favour of the second defendant, was not binding on them or on the stanom *Held* that the suit was barred under Limitation Act, 1877, sch. II, art. 120. PURAKEN *v.* PARVATHI [I. L. R., 16 Mad., 138

65. ——————— and art. 110—*Suit to recover customary dues payable on account of a chattram—Suit for rent.*—In a suit by the District Board in charge of a chattram to recover a certain sum as the arrears of various merais, being customary dues payable by the defendants for the benefit of the chattram on account of lands held by them, the defendants among other defences relied upon a plea of limitation *Held* that the suit was governed by Limitation Act, sch. II, art. 120, and not by art 110 as a suit for rent VENKATAVARAGA *v.* DISTRICT BOARD OF TANJORE [I. L. R., 16 Mad., 305

66. ——————— and s. 131—*Periodically recurring right—Denial of right*—In a suit brought in 1889 by a landholder against the Secretary of State for a declaration of his right against Government to have certain remissions made in the sum to which he was annually assessed, no consequential relief was sought, and it appeared that the plaintiff's claim for the remission had been made in 1878 and had been refused by Government *Held* that Limitation Act, 1877, sch. II, art. 120, and not art. 131, applied to the case, and the suit was barred by limitation. BALAKRISHNA *v.* SECRETARY OF STATE FOR INDIA [I. L. R., 16 Mad, 294

67. ——————— and art. 144—*Emolu-*

ation Act, and must, in consequence, be enforced within six years of the accrual of the right. RATHNA MUDALLIAR *v.* TIRUVENKATA CHARIAR [I. L. R., 22 Mad., 351

68. ——————— *Liability of son for father's debts—Suit for money against sons of a deceased judgment-debtor—Decree for money against father to be discharged by instalments—Previous execution proceedings—Form of decree.*—A personal decree on a mortgage was passed against a Hindu (the mortgagor) and his two sons on the 19th October 1877. The decree provided for payment of the secured debt in various instalments by May 1895. The mortgagor died in 1883, having discharged part of the debt. The decree-holder having attached

controversy should be determined in a regular suit. The other defendants in the suit of 1877 had both

instalment would have become due from the deceased judgment-debtor; and that the plaintiff was entitled to a decree for payment out of the family property of all such instalments as would have so become due at the date of the suit, and for a declaration only as to the subsequent instalments RAMAYYA *v.* VENKATARATNAM . . . . I. L. R., 17 Mad., 122

69. ——————— *Suit to set aside an instru-*

NARAIN . . . . . I. L. R., 16 All., 73

70. ——————— and arts. 91, 95—*Suit by auction-purchaser of mortgaged property to cancel a perpetual lease granted by the mortgagor in contravention of a covenant in the mortgage.*—During the continuance of a mortgage which contained a covenant against alienation of the mortgaged property, the mortgagor made a perpetual lease of that property. The mortgagee brought a suit on his mortgage, and, having obtained a decree, put the mortgaged property up to sale. The auction-pur-

LIMITATION ACT, 1877—*continued.*

treated as merely subsidiary to the main relief asked. *Pachamuthu* v. *Chinnappan, I. L. R., 10 Mad., 213,* and *Uma Shankar* v. *Kalka Prasad, I. L. R., 6 All., 75,* referred to. *Din Dial* v. *Har Narain, I. L. R., 16 All., 73,* followed. MUHAMMAD BAQAR v. MANGO LAL . . I. L. R., 22 All., 90

71. ———— *Suit to set aside invalid trust—Conveyance to trustees.*—Under art. 120, sch. II of the Limitation Act (XV of 1877), the right to recover property settled on invalid trusts accrues directly the property is conveyed to the trustees. COWASJI NOWROJI POCHKHANAWALLA v. RUSTOMJI DOSSABHOY SETNA . . I. L. R., 20 Bom., 511

72. ———— *Exclusive occupation of joint lands by some of the co-owners—Suit by the other joint tenants for compensation.*—Some of the joint tenants of certain lands took the use and occupation of part of the joint lands to the exclusion of the other joint tenants, who afterwards brought a suit for compensation for such use and occupation. *Held* that the period of limitation for such a suit was governed by art. 120 of the Limitation Act, and that therefore the plaintiffs were entitled to recover compensation for six years. WATSON & CO. v. RAM CHAND DUTT . . . I. L. R., 23 Calc., 799

73. ———— *Suit to recover haq-i-chaharum—Suit for money had and received—Limitation Act, art. 62.*—*Held* that the limitation applicable to a suit by a zamindar to recover haq-i-chaharum, alleged to be payable to him by custom on the sale of a house, was that prescribed by art. 120 of the second schedule of the Indian Limitation Act, 1877, and not that prescribed by art. 62. *Kirath Chand* v. *Ganesh Prasad, I. L. R., 2 All., 358,* approved. *Nanku* v. *Board of Revenue for the N.-W. P., I. L. R., 1 All., 444,* referred to. *Raghu Nath Prasad* v. *Girdhari Das, Weekly Notes, All. (1893), 65,* dissented from. SHAM CHAND v. BAHADUR UPADHIA [I. L. R., 18 All., 430

74. ———— *Decree for rent against*

Act, sch. II, art. 99, did not govern the case, and that, whether art. 61 or art. 120 was applicable, the suit was not barred by limitation. PATTABHIRAMAYYA NAIDU v. RAMAYYA NAIDU . I. L. R., 20 Mad., 23

75. ———— *Suit to set aside sale in*

LIMITATION ACT, 1877—*continued.*

BHATTACHARJEE . . 1 C. W. N., 516

———— art. 121 (1871, art. 119; 1859, s. 7).

1. ———— *Sale for arrears of rent of patni tenure.*—Upon the sale of a patni talukh for

2. ———— *Encroachment by a trespasser—Incumbrance—Adverse possession—Purchaser at sale of talukh for arrears of rent.*—Adverse possession is an incumbrance within the meaning of art. 121, sch. II of the Limitation Act (XV of 1877).

3. ———— *Act IX of 1871, art. 120—Suit to cancel under-tenures—"Avoid."*—The

———— art. 122 (1871, art. 121; 1859, s. 1, cl. 11).

1. ———— *Execution of decree against Sirdar's heir who is not a Sirdar—Suit on decree—Decree payable by instalments.*—The plaintiff's

LIMITATION ACT, 1877—*continued.*

proceedings were pronounced to be irregular. The plaintiff thereupon, in the year 1877, filed the present

as analogous to an instalment decree and made as

as the command of the Judge prescribes a term for the performance of the several parts of his order, it is to be *construed as becoming a judgment for purposes of* limitation as to each instalment only on the day when payment is to be made. SAKHARAM DIKSHIT *v.* GANESH SATHE . . . I.L.R., 3 Bom, 193

2. ———— *Suit on barred judgment-debt—Suit for administration—Mortgage decree—Transfer to High Court for execution—Application for execution by sale—Civil Procedure Code (1882), ss. 227, 230, and 244—Transfer of Property Act (IV of 1882), ss 67, 89, and 99—Limitation Act (XV of 1877), sch II, arts. 179 and 180.*—On the 29th September 1882, a decree was obtained against the defendant's husband in a suit on a mortgage by the latter dated the 6th April 1880. On the 27th July 1883, an order was made for transfer of the decree to the High Court for execution. On the 8th April 1886, the mortgagee applied to the High Court for execution by attachment of the mortgaged properties, and in the same year an order for attachment was made. The mortgagee died in April 1892, and on the 20th August 1894 the plaintiff (his widow and administratrix) applied to the High Court for an order absolute for sale of the mortgaged properties under s. 89 of the Transfer of

———— art. 123 (1871, art. 122; 1859, s. 1, cl. 11).

1. ———— *Suit under will for sum as legacy.*—Where a sum assigned to sons was, by the terms of the will, to be regarded as a legacy, and not as a charge on the estate for their maintenance,—*Held* that cl. 11, s. 1, Act XIV of 1859, was the limitation applicable to suits under the will for recovery of the sum due as a legacy. NANA NARAIN RAO *v* RAMA NUND . . 2 Agra, 171

2. ———— *Suit for legacy*—R by his will gave the whole of his property to his brothers,

the plaintiffs was born. The mother having since died without drawing the principal or taken the allotment of land, and the manager of the family estate having refused to give the plaintiffs their due, they sued to recover what was left to their mother. *Held* that this was a suit for legacy, and that cl. 11, s. 1, applied so far as the claim for money was concerned; and that the cause of action to the plaintiffs occurred at the time of the birth of the elder plaintiff, when his mother became immediately entitled to the principal sum of money and to the land PROSSONO CHUNDER ROY CHOWDRY *v.* GYAN CHUNDER BOSE . . 13 W. R., 354

3. ———— *Will— Suit for share of testator's moveable property.*—Art. 122 of Act IX of 1871 applies to a suit for a share of the residue of a testator's moveable property disposed of by his will TEEPOORASOONDERY DOSSEE *v.* DEBENDRONATH TAGORE . I. L. R, 2 Calc, 45

4. ———— *Suit for legacy against representative of testator*—Art. 123 of the Limitation Act only applies to cases in which the

5 ———— and art. 120—*Executor de son tort—Suit for a share of Government pro-*

claimed the property under a will, but the will was set aside by the Court as false in 1884. *Held* that Limitation Act, sch II, art. 123, is applicable only to cases in which the defendant lawfully represents the estate of the deceased, and that the suit was accordingly barred by limitation. SITHAMMA *v* NARAYANA . . . I. L. R., 12 Mad., 487

6 ———— *Suit for legacy under a will—Cause of action—Amendment of plaint.*—A suit was brought in May 1894 by a legatee claiming under the will of a testator, who died on the 8th December 1831, against the executors of the will. The plaint did not specifically ask for payment of the legacy or for ascertainment of the share in the residue due to the plaintiff, but set forth certain

LIMITATION ACT, 1877—*continued.*

alleged acts of misconduct on the part of the defendants with respect to their dealings with the property, and prayed the Court to call for an account, to set aside certain sales of the property made by the defendants, and for damages. The Court of first instance, without going into the merits, held that the suit was really for an account, and dismissed it as being barred. On appeal to the High Court,—*Held* that the plaint should have been amended in order to show clearly that the plaintiff really was trying to recover his legacy from the defendants personally, and that therefore the suit fell within art 123, sch. II of the Limitation Act, which gives a period of twelve years from the date the legacy became due, and, that being one year after the testator's death (or the 8th December 1882), the suit was in time. CURSETJEE PESTONJEE BOTLIWALLA *v.* DADABHAI EDULJEE . I. L. R., 19 Mad., 425

7. ———— *Non-claim of share under an intestacy*.—One *M N W* died intestate in 1837, leaving a widow (*M*) and two sons. *M* obtained letters of administration, and until her death in 1897 remained in sole possession and enjoyment of her [illegible] 'y to a [illegible] to the [illegible] widow [illegible] both sons to recover the shares to which they were originally entitled was barred by limitation (art. 123 of the Limitation Act), and their right to such shares was extinguished under s. 28 of the Limitation Act. *M N W*'s estate had therefore become merged in *M*'s estate. NAVROJI MANOCKJI WADIA *v.* PEROZBAI [I. L. R., 23 Bom., 80

8. ———— *Suit by a Mapilla widow for her share in her husband's property*.—The widow of a Mapilla, who had died intestate more than fourteen years before suit, sued to recover a one-sixteenth share of the property left by him and his brother. *Held* that, although the parties were Mapillas, the suit was governed by art. 123 of the Limitation Act, and was accordingly barred. KASMI *v.* AYISHAMMA . . I. L. R., 15 Mad., 60

9. ———— *Suit to recover vatan allowance*.—In 1864 *N B*, the owner of a share in a deshpande vatan, died childless and intestate. A [illegible]

claiming to be co-sharers in the one anna and four pies share of *N B*. The defendants contended

LIMITATION ACT, 1877—*continued.*

(*inter alia*) that the suit was barred. The Court of first instance awarded the plaintiffs' claim for the three years previous to the suit, and rejected the rest of the claim. The defendants appealed to the District Judge, who held that the plaintiffs' claim [illegible]

hak. *G* was quite independent of them, and this recognition did not take place until 1876—less than twelve years before the institution of the plaintiffs' suit. KESHAV JAGANNATH *v.* NARAYAN SAKHARAM [I. L. R., 14 Bom., 236

———— **art. 124 (1871, art. 123).**

Suits of the nature described in this article were under Act XIV of 1859, held to be governed by cl. 12 of s. 1, the general limitation of twelve years.

1. [illegible]

any land, yet being by that law classed as immoveable property, should be held to be immoveable property within the meaning of cl. 12 of s. 1 of the Limitation Act, 1859. KRISHNABHAT BIN HIRAGANGE *v.* KAPABHAT BIN MAHALBHAT [6 Bom., A. C., 137

BALVANTRAV *alias* TATIAJI BAPAJI *v.* PURSHOTAM SIDHESHVAR . . . . 9 Bom., 99

In a Madras case, however, the six years' period was held to apply.

2. ———— *Office of karnam—Incidental right to land attached to office*.—Suit [illegible]

claim, and the right to possession of the land merely an incident dependent upon that title, that therefore, as the period of limitation applicable to the former claim (six years) had elapsed before the in- [illegible]

in the possession of the office by cl. 16, s. 1, Act XIV of 1859. TAMMIRAZU RAMZOGI *v.* PANTINA NARSIAH [6 Mad., 301

3. ———— *Suit for possession of hereditary office and for account—Adverse possession*.—*X*, the founder of two pagodas, died in 1795

LIMITATION ACT, 1877—*continued.*

leaving six sons, of whom two were named *C* and *T* respectively. *T*, the younger, died in 1834, leaving two sons, of whom one, who died in 1853, was the father of the plaintiff. The founder's elder son, *C*, died in 1816 leaving two sons (*M*, who died in 1840, and *L*, who died in 1847) and two daughters (*A* and the defendant's mother). The office of dharmakarta descended from the founder to *C*. After his death, a

by plaintiff, as eldest surviving male member of the founder's family, claiming the office of dharmakarta, or that, if he were not entitled, some proper person

CHENNA KESAVARAYA *v.* VAIDELINGA [I. L. R., 1 Mad., 343

4. ——— *Suit for possession of hereditary office—Watan, Alienation of.*—Adverse possession, in the case of an alienation of a watan, only begins to run against the heir from the time when he is entitled to succeed to the possession of the watan property, *i e.*, from the date of the death of the wautandar. RAVLOJIRAV BIN TAMAJIRAV *v.* BALVANTRAV VENKATESH [I. L. R., 5 Bom., 437

5. ——— *Suit to have the appointment of a karnam declared void—Suit for hereditary office.*—A suit by existing karnams, to have the appointment of another person as a karnam jointly with themselves declared void, does not fall within the provision of art. 124 of the Limitation Act. LAKSHMINARAYANAPPA *v.* VENKATARATNAM [I. L. R., 17 Mad., 395

6. ——— *Suit for declaration of*

LIMITATION ACT, 1877—*continued.*

barred by limitation. SARKUM ABU TORAB ABDUL WAHEB *v.* RAHAMAN BUKSH I. L. R., 24 Calc., 83

7. ——— *Suit by reversionary heir for office of shebait—Hindu law—Endowment—Succession in management.*—Where a shebait does not appoint his or her successor as provided in the will of the founder and where there is no other provision for the appointment of shebait, the management of the endowment must revert to the heirs of the founder; and the limitation applicable to a suit for possession of such an office is twelve years under art. 124, and not six years under art. 120, of the Limitation Act. *Jai Bansi Kunwar* v. *Chattardhari Singh*, *5 B. L. R., 181 13 W. R., 396*, and *Gossamee Sree Greedhareejee* v. *Ruman Lolljee*, *L. R., 16 I. A., 137. I. L. R., 17 Calc., 3*, referred to. JAGANNATH PRASAD GUPTA *v.* RANJIT SINGH [I. L. R., 25 Calc., 354

8. ——— and s. 28 — *Right to a temple office and its endowments—Adverse possession.*—Certain offices in a temple and the endowments attached thereto were held jointly by the members

by which it was arranged that the offices should be held in rotation and the lands in equal shares; and, in accordance with this settlement, a certain village

and emoluments were indivisible and held by right to the older branch of the family. The plaintiff now sued in 1895 to establish his right to the entire offices and to recover possession of the other village. *Held* that the defendant had acquired a divisible

——— art. 125 (1871, art. 124).

1. ——— *Suit to set aside deed made by Hindu widow.*—The cause of action in a suit by a reversioner during a widow's lifetime to declare a conveyance made by her to be void was held under Act XIV of 1859 to arise from the date of the conveyance. BHIKAJI APAJI *v.* JAGANNATH VITHAL [10 Bom., 351

See PERSHAD SINGH *v.* CHEDEE LALL [15 W. R., 1

2. ——— *Hindu widow—Suit to set aside alienation and to restrain waste.*—*K*, a Hindu widow, assigned one moiety of her share in her husband's estate to *H S*, in consideration that *H S* should conduct and pay all costs of a suit which was then to be instituted against her husband's brothers, of whom *B C*, the present plaintiff, was one, to recover the share to which she was entitled, and also to pay her maintenance in the meantime. The assignment was dated 24th December 1864.

LIMITATION ACT, 1877—*continued.*

The suit was brought, and a certain sum, in Government paper and notes, was decreed to *K* on August 5th, 1868. This sum was paid into Court by *B C* on 10th March 1869, and upon *K*'s application was, on 10th March 1871, paid out to her *B C* then sued as reversionary heir to have the deed of assignment set aside, and prayed that *H S* should be restrained from receiving the moiety. The plaint was filed on

...ation. BISWANATH CHUNDER *v.* KHANTOMANI DASI
[7 B. L. R., 131

3. —— —— —— *Alienation—Decree in a collusive suit against a Hindu widow.—Held* that the action of a Hindu widow, in causing a collusive suit to be brought against her and confessing judgment therein, whereby the plaintiff in that suit got a decree for possession of property of which the widow was in possession holding a Hindu widow's estate, amounted to an "alienation" of such property within the meaning of art. 125 of the second schedule of Act XV of 1877. SHEO SINGH *v.* JEONI
[I. L. R., 19 All., 524

This article applies only to suits to have deeds of

See CHUNDER KANTH ROY *v.* PEARY MOHUN ROY
[1 Ind. Jur., O S., 21
Marsh., 33 : 1 Hay, 69

WOOMA CHURN BANERJEE *v.* HARADHUN MOZOOMDAR . . . . 1 W. R., 347

and SRINATH GANGOPADHYA *v.* MAHES CHANDRA ROY . . . . . 4 B. L. R., F. B., 3

—— art. 126 (1871, art. 125)—*Cause of action—Suit for possession of joint estate impro-*

[20 W. R., 416

See NOWBUT RAM *v.* DURBAREE SINGH
[2 Agra, 145

—— art. 127 (1871, art. 127; 1859, s. 1, cl. 13).

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.
[I. L. R., 18 Bom., 513

S. 1, cl. 13, of the Act of 1859 applied to Mahomedan as well as Hindu families KHYROONISSA *v.* SABHOONISSA KHATOON . . 5 W. R., 238

LIMITATION ACT, 1877—*continued.*

as this article does; the corresponding article of the Act of 1871 was specially applicable only to Hindus.

1. —— *Suit for share in family dwelling.*—A claim by a member of a joint Hindu family to a share in a family dwelling, on the allegation that the house was originally joint, fell within the provisions of s. 1, cl. 13, of Act XIV of 1859. DENONATH SHAW *v.* HURRYNARAIN SHAW
[12 B. L. R., 349

KRISHNADHUN CHOWDHRY *v* HUR COOMARY CHOWDHRAIN . . . . 25 W. R., 37

a case where a mortgage having been made by one member on behalf of all to a stranger, that member afterwards, against the will of his co-partners, releases the equity of redemption. RADHANATH DAS *v.* ELLIOTT . . . . . 6 B. L. R., 530

S. C. RADHANATH DAS *v.* GISBORNE & Co.
[15 W. R., P. C., 24
14 Moore's I. A., 1

3. —— *Suit to establish right to share profits of watan*—In a suit to establish a right to share in a watan and to recover a portion of the profits thereof for seven years,—*Held* that the case was governed, as to limitation, by cl. 13, and not cl. 16, of s. 1, and that arrears for seven years were therefore properly awarded. GUNDO ANANDRAV *v.* KRISHNARAV GOBIND . . 4 Bom., A. C., 55

4. —— *Suit to enforce right to*

5. —— *Right of son claiming*

a case are considered to take by survivorship rather than by inheritance. HANSJI CHHIBA *v* VALABH CHHIBA . . . . I. L. R., 7 Bom., 297

6. —— *Suit for division of family*

LIMITATION ACT, 1877—*continued*

7. ——————— *Suit to compel partition of moveable and immoveable property.*—A Hindu of the Southern Maratha country, having two sons un-

ration of his right to a partition of the ancestral estate, was dismissed on the ground that he had no right in his father's lifetime to compel a partition of the moveables, and that, as to the immoveables, the claim failed, because they were situate beyond the jurisdiction of the Court *Held* that the suit was not barred under the Limitation Act (XIV of 1859), s. 1, cl. 13. As to the immoveables, setting aside the fact that the plaintiff had remained in possession of one of the houses of the family which had been

father's interest was concerned, the succession only opened on his death. LAKSMAN DADA NAIK *v.* RAMCHANDRA DADA NAIK . I. L. R., 5 Bom., 48 [L. R., 7 I. A., 181

8. — — — *Suit to recover share of joint property inherited*—Cl. 13, s. 1 of Act (XIV of 1859, was not applicable to a suit to recover a share of joint property to which the plaintiff claimed to be entitled by inheritance. DINONATH RANA *v* RUBEEBUNNISSA BIBEE . 20 W. R., 270

9. ——————— *Suit to enforce right to share in joint property* —Suits to enforce the right to share in any property, on the ground that it is joint family property, must be brought within twelve years, exclusive of the period during which the property was under attachment by Government and neither party was in possession SHIDOJIRAV *v.* NAIKJIRAV . . . . 10 Bom., 228

10. ——————— *Suit by adopted son for share of ancestral estate—Cause of action.*—As against an adopted son suing for his share of the ancestral estate, the law of limitation does not begin to run until the allotment of such share has been demanded and refused. AYYAVU MUPPANAR *v* NILADATCHI AMMAL . . . 1 Mad., 45

11. ——————— *Suit of share of family property—Exclusion from possession.*—In a suit to enforce the right to share in property on the ground that it was joint family property,—*Held* that, upon the construction of cl 13, s 1, Act XIV of 1859, the claimant, in order that the statute shall be a bar, must have been entirely out of possession and excluded from possession by those against whom he claims. GOVINDUN PILLAI *v.* CHIDAMBARA PILLAI [3 Mad., 99

See RAJESWARA GAJAPATY NARAINA DEO MAHARAJULUNGARU *v.* VIRAPRATAPAH RUDRA GAJAPATY NARAINA DEO MAHARAJULUNGARU [5 Mad., 31

and SUBBAIYA *v.* RAJESVARA SASTRULU [4 Mad., 354

12 ——————— *Question as to exclusive possession—Onus of proof—Refusal to allow share.*—The question of fact whether there has been *such exclusive possession or enjoyment* must be decided upon the evidence in each case, and may be satisfactorily proved, although there may be no evidence of an express refusal to allow plaintiff any part of the benefits of the joint property. SUBBAIYA *v.* RAJESVARA SASTRULU . . 4 Mad., 354

JARAOO *v.* FAKEERA . . . 3 Agra, 133

RAJOO SINGH *v.* GUNESHMONEE BURMONEE [15 W. R., 400

13. ——————— *Suit for share of joint property.*—*A* got a decree for possession, but before she obtained possession, *B* obtained a decree declaring him jointly entitled with *A* to a particular share of the same property. *Held* that, when *A* got possession, that possession inured to the benefit of *B* as well as to herself, and *B*'s cause of action in a suit against *A* in respect of the same property dated from the time when *A* obtained possession and a suit was not barred if brought within twelve years of that time. GOOROO CHURN SIRCAR *v* GOLUCKMONEE DOSSEE [13 W. R., 188

15. ——————— *Suit for share of joint property.*—*Cause of action.*—Where parties are living together in commensality and in joint possession of property, no cause of action arises to one of them for the recovery of his share until he is dispossessed by the other, and limitation runs from the date of such dispossession. JADUB CHUNDER SANDYAL *v* BHYRUB CHUNDER SANDYAL [19 W. R., 344

16. ——————— *Adverse possession—Suit for partition*—Where the bulk of the estate of a

LIMITATION ACT, 1877—*continued.*

circumstances to show that they accepted the sir lands in lieu of the shares that would have been allotted to them on a partition The case of *Apporier* v *Rama Subba Aiyan, 11 Moore's I. A., 75,* approved. RUNJEET SINGH v. GUGRAJ SINGH L. R., 1 I. A., 9

17. ——— *Receipt of payments for share of joint property* —That a Hindu widow, entitled to her husband's share of the joint property, continues to live in the family and mess with them, is sufficient, in the absence of evidence to the contrary, to show that she is receiving payments on account of her share, within cl. 13, s. 1, Act XIV of 1859. GOBIND CHUNDER BAGCHEE v. KRIPAMOYEE DABEE . . . 11 W. R., 338

18. ——— *Rent collected by one member of Mahomedan family living jointly* — Even if a member of a Mahomedan family collects

[illegible]

24 W. R., 1

19. ——— *Joint property, Suit for share of—Onus probandi.*—A suit to enforce a right to a share of joint family property must be

[illegible]

It is not sufficient for the plaintiff to show that the property was joint family property. GOSSAIN DOSS KOONDOO v. SIRO KOOMAREE DEBIA [12 B. L. R., 219 : 19 W. R., 192

UMBIKA CHURN SHET v. BHAGGOBUTTY CHURN SHET . . . . . . 3 W. R., 173

BYDLONATH OJHA v. GOPAL MAL 6 W. R., 170

HUREEHUR MOOKERJEE v. TEENCOWREE DOSSEE [6 W. R., 170

KRISTO CHUNDER BURMO-SURMAH v. MOHESH CHUNDER BURMO SURMAH . 23 W. R., 381

20. ——— *Suit for share of joint*

[illegible]

DWARKANATH ROY . 2 B. L. R., A. C., 284

LIMITATION ACT, 1877—*continued.*

S. C. WOOMA SOONDUREE DOSSEE v DWARKANATH ROY . . . . . 11 W. R., 72

AMITRAV BIN YESHVANTRAV DESHMUKH v. ANTABA ABAJI DESHMUKH . 5 Bom., A. C., 50

21. ——— *Entry of names in register.*—*Held* that the plaintiffs' suit was barred by

[illegible]

entered in the revenue register as proprietors, is not equivalent to proof of payment to and receipt by them of any profit on account of their share. KHORUN SINGH v. BEHAREE LALL . 3 Agra, 85

MAKSOOD ALI KHAN v. GHAZEEODDEEN KHAN [3 Agra, 158

22. ——— *Suit to enforce share of joint property—Proof of payments.*—In ruling that

[illegible]

person in possession or management of the property on account of the plaintiff's alleged share. PROSSONO COOMAR MOOKERJEE v SHAMA CHURN MOOKERJEE [17 W. R., 451

23. ——— *Payments for joint share.* —Proof of payment is not necessary to bring a case within cl. 13, s 1, Act XIV of 1859; but the limitation therein prescribed will apply to the case of a person entitled to a share in property, and simply enjoying the property with the co-sharers, there being no division of money or any payment at all made between them. BRUJOHUREE PAUL v HURO SOONDUREE DEBEE . . . 17 W. R., 530

24. ——— [illegible]

that neither the plaintiff nor her predecessor was in possession within twelve years It was found that the two brothers had lived in the same mess, the elder collecting the rents and profits and therewith managing the family expenses. *Held* that, if *O* did not receive money from *P*, he received money's worth, and that would suffice to bring the case within Act XIV of 1859, s. 1, cl. 13, and if cl. 13 did not apply, cl. 12 must, and the suit was not barred. CHUNDER MONEE DEBIA v. MEHARJAN BIBEE [22 W. R., 185

25. ——— *Suit by Hindu excluded from joint family property.*—In a suit by a Hindu excluded from joint family property, to enforce a right to a share therein, brought before the 1st of

LIMITATION ACT, 1877—*continued.*

October 1877, the period of limitation must be computed under art 127, and not under art. 143, of sch. II of Act IX of 1871. KALI KISHORE ROY *v.* DHUNUNJOY ROY . . I. L. R., 3 Calc., 228

HANSJI CHHIBA *v* VALABH CHHIBA
[I. L. R., 7 Bom., 297

Under Act IX of 1871, the cause of action arose

26. ——— *Exclusion from share of joint property*—Art 127, sch. II of Act IX of 1871 presupposes the existence of joint family property, and that there has been an exclusion from participation in the enjoyment of such property. *Semble*—The word "excluded" in that article implies previous inclusion SARODA SOONDURY DOSSEE *v.* DOYA MOYEE DOSSEE . . I. L. R., 5 Calc., 938

27. ——— *Joint property—Evidence*—Before a plaintiff can bring his case within art. 127 of sch II of the Limitation Act, 1877, it is incumbent on him to show that the property in which he seeks to recover a share is "joint property." OBHOY CHURN GHOSE *v* GOBIND CHUNDER DEY
[I. L. R., 9 Calc., 237

28. ——— *Suit by person claiming a share in joint family property.*—The word "person" mentioned in art. 127 of sch II of the Limitation Act means some person claiming a right to share in joint family property upon the ground that he is a member of the family to which the property belongs. *Radhanath Doss* v. *Gisborne, 14 Moore's I. A., 1 15 W. R., P. C., 24; Ram Lakhi* v. *Ambica Charan Sen, I. L. R., 11 Calc., 680*, and *Horendra Chundra Gupta Roy* v *Aunordi Mundul, I. L. R., 14 Calc., 544*, relied on. KARTICK CHUNDER GHUTTUCK *v* SARODA SUNDURI DEBI
[I. L. R., 18 Calc., 642

29. ——— *Application of article—Stranger holding property belonging to joint family.*—Art. 127 of sch II of the Limitation Act (XV of

30. ——— *Claim to property as daughter's son.*—The provisions of art 127 of sch II of the Limitation Act do not apply to a person who claims to inherit property as a daughter's son. MOTHURA NATH DUTT *v.* BORKANT NATH DUTT. PEARI MOHUN DUTT *v.* BORKANT NATH DUTT
[11 C. L. R., 312

31. ——— *Suit for possession and partition—Acquiescence in alienation—Exclusion from share.*—In a suit to obtain a share by partition of a joint family property, the interest of the plaintiff's father having been sold in execution of a decree, limitation is to be computed from the time when exclusion from his share first becomes known to the plaintiff. ISSURIDUTT SINGH *v.* IBRAHIM
[I. L. R., 8 Calc., 653

32. ——— *Exclusion from share—Suit for partition.*—Where in a suit for partition a District Judge held the plaintiff's claim barred on

property had become known to him. HARI *v.* MARUTI . . I. L. R., 6 Bom., 741

33. ——— *Exclusion from joint property.*—A collateral member of a Hindu family,

family was for some purposes undivided, still this was not the case of an ordinary undivided Hindu family, and that, in such a case as this, the presumption must depend on somewhat special circumstances However, this case must be decided on the distinct ground that, as the claimant had been excluded from his share, if he had one, for more than twelve years, he knowing of this exclusion, the law of limitation enacted in Act XV of 1877, sch. II, art. 127, was applicable, and the claim was barred by lapse of time RAGHUNATH BALI *v.* MAHARAJ BALI
[I. L. R., 11 Calc., 777: L. R., 12 I. A., 112

34. ——— *Aliyasantana law—Exclusion from joint family property.*—In a suit in which the plaintiffs sought declarations that they were members of an undivided Aliyasantana family with the defendants, that certain property belonged to the family, and that plaintiff No. 1, the senior member of the family, was entitled to have *the lands registered in his name*, the defendants denied the allegations in the plaint, and pleaded that the suit for declarations only was not maintainable, and that it was barred by limitation. It was found that the plaintiffs had *separated them-*

LIMITATION ACT, 1877—*continued.*

joint family property, and that their suit to enforce a right to share therein was barred. *Mahalinga* v. *Mariyamma, I L R, 12 Mad., 462,* distinguished MUTTAKKE v. THIMMAPPA I. L. R., 15 Mad., 186

35. ———— *Suit for share of joint property—Exclusion—Adverse possession.*—In a suit for a share of undivided property from which the plaintiff had been out of possession admittedly for thirty five years,—*Held* that the suit was not barred by limitation, as the possession of the share in question by the defendant since 1845 had not been a possession of it as their own property to the exclusion of the plaintiffs or their father. NILO RAMCHANDRA v. GOBIND BALLAL

[I. L. R., 10 Bom., 24

36 ———— *Limitation Act, 1859, s. 1, cl 13—Hindu law, Maintenance—Refusal of person liable to maintain—Cause of action* —In a suit for maintenance brought in 1887 by a Hindu widow against the undivided family of her deceased husband, who had died about twenty-four years before

on the defendant's part to maintain her. *Narayan Rao Ramchandra Pant* v. *Ramabai, I. L. R., 3 Bom, 415,* followed. RAMANAMMA v. SAMBAYYA . . I. L. R., 12 Mad., 347

37. ———— *Suit for share of property alleged to be joint—Limitation Act, 1859, s 1, cl. 13—Property in possession of a managing member*—Suit for partition and possession of an undivided share of property sold to plaintiff by an aged gosha lady of the class of Canarese Mahomedans called Navayats The property sold was the vendor's share as heiress of her father, brother, and sister,

ation. KHATIJA v. ISMAIL

[I. L. R., 12 Mad., 380

38. ———— *Suit for possession by purchaser from sharer in joint family.*—Art 127 of sch II of Act XV of 1877 does not apply to a suit where the plaintiff is a stranger, who has purchased a share in joint family property from one of the members thereof. HOBENDRA CHUNDRA GUPTA ROY v. AUNOARDI MUNDUL

[I. L. R., 14 Calc., 544

39. ———— *Hindu law—Joint family—Joint estate—Partition—Portion of estate reserved undivided—Possession of reserved portion by one member of family—Adverse possession—Possession, Inference arising from—Burden of proof—Res judicata as between defendants.*—The plaintiffs sued for part of a house as a portion of joint family property left undivided on the occasion of a general partition which had taken place about thirty-five years before the suit The defendant had since then been in sole possession and enjoyment of the house in dispute. The Subordinate Judge dismissed the suit as barred by limitation on the ground that the plaintiffs had failed to prove participation in possession or enjoyment within twelve years. On appeal, the Assistant Judge held that, as no share had been demanded or refused, the defendant's possession was not adverse to the plaintiffs, and as the house in dispute had been admittedly reserved from partition, art. 127 of the Limitation Act (XV of 1877) did not apply. He therefore reversed the decree of the Subordinate Judge, and remanded the case for re-trial on the merits. On appeal to the High Court,—*Held* that the suit was barred The fact that the house in question had admittedly remained undivided did not prevent the operation of the Limitation Act, and art 127 of Act XV of 1877 applied. That article applies equally to a portion of joint family property left undivided as to the whole estate, and a twelve years' exclusion, known to the excluded sharer, binds him in the one case as in the other. What would bar the operation of the article in question would be a reserve of a part of the joint estate from partition and a possession of that portion conceded to, and taken by, one of the sharers as the common property of himself and the other sharers RAMCHANDRA NARAYAN v. NARAYAN MAHADEV

[I. L. R., 11 Bom., 216

See TATYA v. ANAJI

[I. L. R, 11 Bom., 220 note

and VITHOBA v. NARAYAN

[I. L. R, 11 Bom., 221 note

40. ———— *Hindu law—Partition—*

certain land and the capital and assets of their family business which remained under the control and in the possession of one of them, *viz*, the present first defendant. The plaintiff, who was a member of the family, demanded his share in the undivided property on the 4th of March 1881, and the defendants refused to give effect to his claim. The plaintiff in 1892 sued for his share in the property. *Held* that the property in question was co-parcenary property, notwithstanding the transaction of 1877, and that the plaintiff's suit was not barred by limitation. MUTHUSAMI MUDALIAR v. NALLAKULANTHA MUDALIAR

[I. L. R., 18 Mad., 418

41 ———— *Exclusion from share in a portion of joint property.*—The fact that the ... share in ... art. 127, ... of 1877), ... art from ... knowledge. VISHNU RAMCHANDRA v. GANESH APPAJI CHAUDHARI . . . I. L. R., 21 Bom., 325

42. ———— and art. 144—*Partition effected without taking into account a minor co-parcener—Invalid partition—Adverse possession—Exclusion from joint property.*—Three brothers,

LIMITATION ACT, 1877—*continued.*

S, L, and *K,* were members of a joint Hindu family. In 1862 *S* and *L* divided the whole of the family property between them without reserving any share for their brother *K,* who was then a minor. *K* lived with *L* as a member of his family. *L* died in 1867, leaving a childless widow, with whom *K* continued to live till his death 1876. *K* left an infant son (the plaintiff), only a year old. Subsequently, *S* died in 1887, leaving two widows without issue. In 1889 the plaintiff, being still a minor, sued by his next friend to recover the family property in the possession of the widows of *L* and *S*. *Held* that the suit was not barred by limitation, either under Act IX of 1871 or Act XV of 1877, in the absence of any evidence showing that *K* ever demanded

43. ———— *Suit for partition—Exclusion—Burden of proof.*—In a suit for partition of joint family property, the defendant pleaded that the plaintiff's branch of the family had been separated more than thirty years ago. The plaintiff proved that the family property was joint, and that he had a share in it. *Held* that, under the circumstances, it lay on the defendants to prove plaintiff's exclusion from the joint estate for more than twelve years and an exclusion known to the plaintiff. JIVANBHAT *v.* ANIBHAT . I. L. R., 22 Bom., 259

44 ———— and art. 142—*Exclu-*

and TREVELYAN, *JJ.*, on the 22nd February 1889,—unreported), followed UMESH CHANDRA BHATTACHARJEE *v.* JAGADIS CHANDRA BHATTACHARJEE [1 C. W. N., 543

45. ———— *Joint family—Possession by one member of family—Neglect by plaintiff to*

Government service, and had been for a long time absent from his native place on duty, the family

tending that he had been in adverse possession from the date of the letter. The Court of first instance awarded the plaintiff's claim. The defendant appealed, and the lower Appellate Court reversed the lower Court's decree, holding that the suit was barred. On appeal by the plaintiff to the High Court,—*Held* that the suit was not barred. The above-mentioned letter of the defendant showed that, up to the date at which it was written, the defendant had not been in possession of the property "as his own property to the exclusion of the plaintiff," and the mere circumstance that, subsequently to the date of the letter, the plaintiff had not participated in the profits, would not, in the absence of other evidence, justify the inference that the plaintiff was then excluded DINKAR SADASHIV *v.* BHIKAJI SADASIV [I. L. R., 11 Bom., 36

46. ———— *Limitation Act, 1859, s. 1, cl. 13—Suit for share on partition of property.*—In

Government. In 1835 the zamindari was granted

leaving an only son, the infant defendant. In 1869 the Court of Wards took charge of the estate on behalf of the infant defendant and allowed his uncle, plaintiff No. 1, to receive the rents of the zamindari

NATHA *v.* RAMBHADRA . I. L. R., 11 Mad., 380

47. ———— *Act XIV of 1859, s. 1, cl 13—Joint family—Partition—Claim by absent member—Adverse possession—Exclusion—Participation in profits of joint property—Payment—*

LIMITATION ACT, 1877—*continued.*

alleged that in 1876 he demanded his share, but was refused. In 1883 he filed this suit for partition. It was contended that the right of the plaintiff had become barred by the Limitation Act (XIV of 1859) and was not revived by Act XV of 1877, which was in force at the date the suit was brought. The Court of first instance awarded the plaintiff's claim. On appeal, the Assistant Judge reversed the decree of the Court below holding that under cl 13 of s 1 of the Limit-

house for a few days, if it were a fact, did not help the plaintiff's title." *Held* by the High Court, following *Ahmed v. Moro Keshav, I L R., 11 Bom., 461 note,* that the occasional residence of the plaintiff's wife with S, who was in possession of the property, might be a benefit out of the estate equivalent to a payment so as to satisfy the requirement of cl. 13 of s. 1 of Limitation Act (XIV of 1859) If such a benefit had been received by the plaintiff within

refused his share, which, according to the plaintiff's allegation, was in 1876 Act IX of 1871 was repealed by Act XV of 1877, which governed the present suit, unless the right to sue had expired under Act XIV of 1859. The Court remanded the case for a fresh decision on the question of limitation, having regard to the above observations KANE BABLE *v.* ANTAJI GANGADHAR . . . I. L. R., 11 Bom., 455

AHMED *v.* MORO KESHAV
[I. L. R., 11 Bom., 461 note

48. ——— *Suit by a Mahomedan for*

49. ——— ——— *Joint family property*—

KASMI *v.* AYISHAMMA . I. L. R., 15 Mad., 60

50. ——— *Mahomedan family—Redemption of mortgage by some co-sharers—Possession by such co-sharers after redemption—*

LIMITATION ACT, 1877—*continued.*

Subsequent claim to property by other co-sharers.—The possession by a Mahomedan co-sharer of property which he has redeemed from a mortgage does not become adverse to the other co-sharers until some

51. ——— *Suit by Mahomedans for possession by right of inheritance of shares in the property of their deceased ancestor*—The words "joint family property" in art. 127 of sch. II of the Limitation Act (XV of 1877) mean "the property of a joint family" Hence the period of limitation

52. ——— *Joint family property—Suit by Mahomedan for possession of share by inheritance.*—Art. 127 of sch. II of the Limitation Act (XV of 1877) does not apply to a suit by Mahomedans for possession by right of inheritance of shares in the property of their deceased ancestor. MAHOMED AKRAM SHAHA *v.* ANARBI CHOWDHRANI
[I. L. R., 22 Calc., 954

53. ——— *"Joint family property"*

brothers was appropriated; and the money representing that share was deposited with the uncle. Subsequently the two who had effected the settlement withdrew their portion of the common share, and the third brother sued the uncle to recover a sum of money as his one-third portion. He alleged that he had been deceived by the defendant into supposing that his portion was included in the amount withdrawn by his brothers, but he did not base his suit upon any allegation of fraud. It was contended that art. 127, sch. II of the Limitation Act (XV of 1877) applied to

AHMED ALI KHAN *v.* HUSAIN ALI KHAN
[I. L. R., 10 All., 109

54. ———

LIMITATION ACT, 1877—*continued.*

in 1881 for a share of joint family estate, the question whether the plaintiff's right to sue was barred by limitation under Act XIV of 1859, s. 1, cl. 13, depended on whether there had been any participation of profits between the plaintiff's father and the defendants, who with him were co descendants from a common ancestor, after 1837 down to which year the family was certainly joint. If in 1871 the period of limitation had expired, the Act IX of that year and the later Acts need not be referred to; for, if they altered the law, they would not revive the right of suit. Upon the evidence it was found that, whatever might have been the father's intention when he settled in another village in 1837, the effect of what had been since done, or omitted, on both sides was [illegible]

55. ———— and art. 131—*Pension, Suit for share of—Gift of pension, Effect of, as against right of heir by inheritance.*—A pension of the nature described in Act XXIII of 1871 (Pensions Act), s. 7, cl. (2), was drawn by a Mahomedan, in whose name al[illegible] registers, for [illegible] family, who, [illegible] their shares f[illegible] executed a dee[illegible] purported to assign to her the whole pension. No mutation of names was affected in the Government [illegible]

———— art. 128 (1871, art. 128; 1859, s. 1, cl. 13).

1. ———— *Suit to recover maintenance.*—S. 1, cl 13, Act XIV of 1859, applied to suits for the recovery of maintenance, whether the right to receive maintenance arose out of the general law or out of a specific deed granting such maintenance. BAMASOONDERY DEBEA *v.* SHAMASOONDERY DEBEA [W. R., 1864, 13

2. ———— *Suit for maintenance.*—Cl. 13, s. 1, Act XIV of 1859, did not apply to a suit for maintenance, when the right to receive such maintenance was not a charge on the estate of a deceased person, but on the estate of living persons. BINODE LALL CHATTERJEE *v.* LUCKHEE MONEE DEBIA . . . . . 4 W. R., 84

3. ———— *Suit for maintenance.*—In a suit for maintenance, the cause of action ordinarily arises at the time when the maintenance having become necessary is refused by the party from whom it is claimed. S. 1, cl. 13, Act XIV of 1859, did not apply to all suits for the recovery of maintenance brought by a Hindu widow against her husband's family, but only to suits in which the plaintiff seeks to have her maintenance made a charge on a particular estate. TIMMAPPA BHAT *v.* PARMESHRIAMMA . . 5 Bom., A. C., 130

4. ———— *Suit for maintenance as charge on estate.*—The plaintiff sued the defendants for future and past maintenance and obtained a decree for future maintenance and for arrears of maintenance for seven years. The parties were [illegible]

assuming the Aliyasantana law recognizes the right of the plaintiff to enforce separate maintenance as a charge upon the estate, the plaintiff's claim was barred by s. 1, cl. 13, Act XIV of 1859. *Per* COLLETT, J.—It is doubtful whether cl. 13, which applies to cases where the right to receive maintenance is a charge on the inheritance of any estate, applies in a case where the right of the plaintiff is said to exist by reason of her being a co-proprietor with the defendants. If the suit be not within cl. 13, then it was one to recover an interest in immoveable property, and was equally barred by cl 12 of s. 1. ABBAKKU *v.* AMMU SHETTATI 4 Mad., 137

SUBRAMANIA MUDALIAR *v.* KALIANI AMMAL [7 Mad., 226

Suits for maintenance not chargeable on any estate were governed by cl. 16 of s. 1 of the Act of 1859; the cause of action in such cases did not arise until there had been a demand and a refusal. KALO NILKANTH *v.* LAKSHMIBAI I. L. R., 2 Bom., 637

5 ———— *Hindu widow—Mainte-* [illegible]

LIMITATION ACT, 1877—*continued.*

harmony after his decease. In a suit brought more than sixteen years after the death of the testator by one of his widows against the eldest son to recover maintenance, it was pleaded for the defendant that the claim was barred by limitation under cl. 13, s 1, Act XIV of 1859, which provides that suits for the recovery of maintenance, when the right to receive

6. ——— *Suit for arrears of maintenance.*—In suits coming within the operation of the Limitation Act, IX of 1871, the widow might recover arrears for any period, unless it appeared that there had been a demand and refusal, in which case she could recover arrears for twelve years only from the date of such demand and refusal. TIVI *v.* RAMJI [I. L. R., 3 Bom., 207

7. ——— and arts 130 and 132—

under Act XV of 1877. AHMAD HOSSEIN KHAN *v.* NILA-UD-DIN KHAN . I. L. R, 9 Calc, 945 [13 C. L. R, 330 L. R., 10 I. A., 45

suit claiming arrears of maintenance at the rate fixed in the decree of 1876. *Held* that the suit did not lie *Sabbanatha Dikshatar v. Subba Lakshmi Ammal, I. L. R, 7 Mad., 80,* distinguished. VENKANA *v.* AITAMMA . I. L. R, 12 Mad., 183

——— art. 130 (1871, art. 130; 1859, s. 1, cl. 14)

See ONUS OF PROOF—RESUMPTION AND ASSESSMENT . 3 W. R., 69, 182

LIMITATION ACT, 1877—*continued.*

Cl 14 of s 1 of the Act of 1859 applied to suits to resume or assess lands held rent-free subsequent to the Permanent Settlement, 1790 KRISHTO MOHUN DOSS BUKSHEE *v.* JOY KISHEN MOOKERJEE [3 W. R., 33

DHUNPUT SINGH *v* BOOJAH SAHOO 4 W. R., 53

1. ——— *Suit for resumption.*—Un-

BOSE . . . 1 W. R., 248

SHISTEEDHUR SAMUNT *v.* ROMANATH ROKHIT [6 W. R., 58

KHELUT CHUNDER GHOSE *v* POORNO CHUNDER ROY . . . . . 2 W. R., 258

2. ——— *Suit for land as part of mal tenure—Cause of action*—The cause of action in a suit for land as part of the plaintiff's mal tenure,

See BARODA KANT ROY *v.* SOOKMOY MOOKERJEE [1 W. R., 29

3. ——— *Suit to recover portion of zamindari granted not in accordance with Mad. Reg XXV of 1802*—The appellant, a zamindar, sued to recover a portion of the zamindari granted

void *Held* that more than twelve years having elapsed since the title accrued to the person under whom the plaintiff derived his right to resume, the appeal should be dismissed. S. 1, cl. 14, of Act XIV of 1859, considered and applied SETA RAMA KRISTNA RAYUDAPPA RANJA RAO *v.* JAGUNTI SITAYAMMA GARU . . . 3 Mad., 67

ALI SAID *v.* SANYASIRAZ PEDDABALIYARA SIMHULU . . . . 3 Mad., 5

See KRISHNA DEVU GARU *v.* RAMACHANDRA DEVU MAHARAJULU GARU . . 3 Mad, 153

4. ——— *Suit for resumption by darpatnidar—Cause of action*—In a suit by a darpatnidar for the resumption of land alleged to be held as lakhiraj under an invalid title, limitation

And so if he is an auction-purchaser. BUSSEERODDEEN *v.* SHIBPERSHAD CHOWDHRY [W. R., 1864, 170

LIMITATION ACT, 1877—*continued.*

NIRUNJUN ACHARJEE *v.* KURALEE CHURN BANERJEE . . . . . 1 W. R., 197

Or a purchaser from Government: his cause of action dates from the time when the right accrued to the Government BUNNOO *v.* AMEEROODDEEN [23 W. R., 24

5. ——————— *Suit for assessment of rent after resumption of lakhiraj lands.*—*A* got a decree against *B*, which declared that certain lands in *B's* possession, alleged to have been lakhiraj lands from before 1790, were *A's* mal lands and liable to assessment. More than twelve years after the date of this decree, *A* sued to assess the lands. *Held* (affirming the decision of AINSLIE, *J.*) that the suit was not barred by the provisions of Act IX of 1871, sch. II, art. 130 PROTAP CHUNDER CHOWDHRY *v.* SHUKHEE SOONDAREE DASSEE . . 2 C. L. R., 569

6. ——————— *Service tenure—Assessment of rent by Settlement officer.*—In a suit against the

remunerated by the use of land, the right to assess was barred by the p ssession of a person not claiming under the grantee for a longer period than twelve years after the right to resume accrued under Act IX of 1871, s. 29, and art. 130, sch. II. KEVAL KUBER *v.* TALUKHDARI SETTLEMENT OFFICER [I. L. R., 1 Bom., 586

7. ——————— and arts. 121 and 149—*Resumption and assessment of lakhiraj land.*—Discussion of the law of limitation as applicable to the resumption and assessment of lakhiraj lands KOYLASHBASHINY DOSSEE *v.* GOCOOLMONI DOSSEE [I. L. R., 8 Calc., 230: 10 C. L. R., 41

8. ——————— *Suit for assessment of rent on lakhiraj land after decree for resumption—*

lakhiraj lands existing prior to 1790, but there was nothing to show conclusively under what law it was instituted, or whether the lakhiraj grant was one subsequent or anterior to 1790 In that suit an *ex-parte* decree was passed in 1863 that "the suit be decreed and the land in dispute be declared to be shukur," *i.e.*, liable to assessment. In a suit brought in 1886 against the representatives of *C* after serving a notice upon them to pay rent for the land at a certain rate, to assess the land at the rate mentioned in the notice, and for the recovery of rent at that rate,—*Held* that the decree of 1863 had not the effect of creating the relationship of landlord and tenant between the parties, and therefore the suit, not having been brought within twelve years from the date of that decree, was barred by art. 130 of the Limitation Act (XV of 1877). BIR CHUNDER MANIKYA *v.* RAJMOHUN GOSWAMI [I. L. R., 16 Calc., 449

LIMITATION ACT, 1877—*continued*

9. ——————— *Suit for assessment of rent on lakhiraj land after decree for resumption—*

more than twelve years after the decree against the representatives of the defendant in the suit of 1862 to assess the land,—*Held* that the decree of 1862 did not create the relationship of landlord and tenant between the parties, and that the suit was therefore barred under art. 130 of the Limitation Act (XV of 1877). NIL KOMUL CHUCKERBUTTY *v.* BIR CHUNDER MANIKYA . I. L. R., 16 Calc., 450 note

——————— art. 131 (1871, art. 131).

1. ——————— *Cause of action—Suit for turn of worship of an idol.*—The plaintiff sued the defendants for a declaration of his right to a turn of worship of an idol for seven-and-a-half days in each month, alleging that the defendants, who were entitled to another turn, had in 1864 taken adverse possession of the idol and properties belonging to it, and had so deprived him (the plaintiff) of his turn of worship from that time. *Held* that the cause of action did not recur as the turn of worship came round. Such suit fell within the operation of cl. 16, s. 1, Act XIV of 1859. GAUR MOHAN CHOWDHRY *v.* MADAN MOHAN CHOWDHRY [6 B. L. R., 352: 15 W. R., 29

2. ——————— *Right to exclusive worship of idol—Right to turn of worship.*—In a suit brought in 1875, in which the plaintiff claimed, ... share in a certain talukh,

by the defendants in 1866,—*Held* that the claim as to the idol B came under the provision of art. 131 of Act IX of 1871, and was not barred, but as to A, the claim was governed by art. 118 of the same Act, and, not having been preferred within six years, was barred by lapse of time ESHAN CHUNDER ROY *v.* MONMOHINI DASSI . I. L. R., 4 Calc., 683

3. ——————— *Worship of idol—Turn of worship—Recurring right.*—A suit for a palla, or right to worship an idol in turn, is a periodically recurring right within the meaning of Act XV of 1877, sch. II, art. 131. *Eshan Chunder Roy v. Monmohini Dassi, I. L. R., 4 Calc., 683,* followed. GOPEEKISHEN GOSSAMY *v.* THAKOORDASS GOSSAMY [I. L. R., 8 Calc., 807: 10 C. L. R., 439

4. ——————— *Suit to recover burial fees—Cause of action.*—In a suit to recover burial fees, the right to which occurred whenever a corpse was brought for burial, the period of limitation was held to be twelve years from the date of the first refusal of the enjoyment of the right. BAHAR SHAH *v.* PEER SHAH . . . . 24 W. R., 385

5. ——————— *Claim for monthly allowance from zamindari—Demand and refusal—Recurring right.*—*S*, being entitled to a monthly allowance

LIMITATION ACT, 1877—*continued.*

from a zamindari under an agreement dated 1861, died in that year. In 1867 *K*, his senior widow,

Council in 1871. In 1872 *M* demanded and was refused the allowance from the zamindari. In 1875 *M* came of age, and in 1879 brought a suit against the zamindar to establish his right to the allowance. *Held* that the claim by *M* was not barred by limitation. RAMNAD ZAMINDAR *v.* DORASAMI [I. L. R., 7 Mad., 341

ZAMINDAR OF RAMNAD *v.* DORASAMI [I. L. R., 7 Mad., 341

6. ———————— *Execution of decree for maintenance—Decree for payment of an annuity without specifying date of payment—Default in paying such annuity—Enforcement of payment by execution of decree—Computation of time.*—A

payments having again fallen into arrears, she again applied for execution, but her application was rejected as barred by limitation, having been made more than three years after the last preceding application. *Held* that the application was not time-barred.

year after year. The decree was, as to each year's

7. ———————— *Declaratory decree for share of rents and for mesne profits—Periodical payments.*—A decree declaring that the plaintiff was entitled to receive every year from the defendant

implies a terminus *ad quem* as well as *á quo*, and in the absence of a special order the terminus was the date of the decree. VINAYAK AMRIT *v.* ABAJI HAIDATRAV . . . I. L. R., 12 Bom., 416

LIMITATION ACT, 1877—*continued.*

8. ———————— and art. 132—*Claim for*

a suit was brought to recover arrears of revenue from the owners of the land. It was found that no payment of revenue had ever been made by the

years' arrears of revenue ALUBI *v.* KUNHI BI [I. L. R., 10 Mad., 115

9. ———————— and art. 62—*Suit to establish title to a share in an annual allowance and also to recover arrears.*—A suit by a co-sharer

dant from the Maharaja's treasury, and also to recover six years' arrears Both the lower Courts

enjoyment of their share for twelve years before suit, unless it were shown that such exclusion was the result of refusal made upon a demand. The period of twelve years provided by that article would run from the time when the plaintiffs were first refused the enjoyment of the right *Held* further that the

10. ———————— and art. 132—*Kattubadi—Recurring right—Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 7.*—In a suit by

———— art. 133 (1871, art. 132).

1. ———————— *Malikana—Recurring cause of action.—Held* (by GLOVER, J.) that malikana

LIMITATION ACT, 1877—*continued.*

is rent under Regulation VIII of 1793; that a cause of action for recovery of arrears of malikana is a

that the suit was barred, as no malikana had been paid for more than twelve years. *Bhuli Singh* v *Nehmu Behu, 3 Ap., 102 12 W. R., 46. Held* on appeal that a suit for the recovery of malikana was barred by limitation if the malikana had not been received for a period of twelve years. BHULI SINGH *v.* NEHMU BEHU

[4 B. L. R., A. C., 29: 10 W. R., 302

BADURUL HUQ *v.* COURT OF WARDS [12 W. R., 498

CHUMMUN *v.* OM KOOLSOOM 13 W. R., 465

Contra, GOVERNMENT *v.* RHOOP NARAIN SINGH [2 W. R., 162

HEERANUND SAHOO *v.* OZEERUN. 6 W. R., 151

Reversed, however, on review, in OZEERUN *v.* HEERANUND SAHOO . . . 7 W. R., 336

where it was held that the twelve years' limitation applied, but that s. 1, cl. 13, of the Limitation Act was applicable.

On a second review in HEERANUND SAHOO *v.* OZEERUN . . . 9 W. R., 102

cl. 12 of s. 1 was held to apply to the case.

2. ——— *Malikana—Interest in*

ROY CHOWDHRY *v.* RAM CHUNDER CHOWDHRY [19 W. R., 94

KRISHTO CHUNDER SANDEL CHOWDHRY *v.* SHAMA SOONDUREE DEBIA CHOWDHRAIN 22 W. R., 520

3. ——— *Payment of malikana by one of joint holders.*—A payment by one of two

4. ———

SINGH . . . . 21 W. R., 88

5. ——— *Suit for malikana.*—Malikana is an annual recurring charge on immoveable property, and may be sued for within twelve years from the time when the money sued for becomes due. HURMUZI BEGUM *v* HIRDAYNARAIN

[I. L. R., 5 Calc., 921: 6 C. L. R., 133

6. ——— *Suit for recovery of hak—Immoveable property.*—In suits for recovery of haks, which are of the nature of claims of money charged upon or payable out of land, the period of limitation is twelve years. BHARATSANGJI MANSANGJI *v.* NAVANAIDHARAYA MANSUKHRAM . 1 Bom., 186

See FUTTEHSANGJI JASWANTSANGJI *v.* DESAI KULLIANRAIJI HAKOOMUTRAIJI

[13 B. L. R., 254: 10 Bom., 281 L. R., 1 I. A., 34: 21 W. R., 178

Overruling decision in FATESSANGJI *v.* DESAI KALYANRAJA . . . 4 Bom., A. C., 189

But *see* RAIJU MANOR *v.* DESAI KULLIANRAI HUKMATRAI . . . 6 Bom., A. C., 56

which was held to be a case of a hak not charged on land.

7. ——— *Suit by hakdar against original grantee—Suit by sharer of hak against another—Desaigiri allowance.*—Art 132, sch. II of the Limitation Act (IX of 1871), applies to suits which are brought by a hakdar against the person originally liable for payment of the hak, and not to suits by one sharer in a watan against another sharer or alleged sharer who has improperly received the plaintiff's share of the hak. A suit of the latter description is a suit for money received by the defendant for the plaintiff's use, and the period of limitation is three years as prescribed by art. 60 of the Act. HARMUKHGAURI *v.* HARISUKHPRASAD

[I. L. R., 7 Bom., 191

8. ——— *Bond charging immoveable property—Enforcing bond by demanding payment as if secured by collateral mortgage of land.*—Where a suit was brought upon a bond to secure the payment of principal and interest, and the relief sought was that payment of principal and interest might be enforced, both as a simple contract liability and a debt secured by a collateral mortgage of immoveable property,—*Held* that the suit was one for the recovery of an interest in land under s. 1, cl 12, Act XIV of 1859, and was not barred for twelve years KRISTNA ROW *v.* HACHAHA SUGAPA 2 Mad., 307

CHETTI GAUNDAN *v.* SUNDARAM PILLAI [2 Mad., 51

KAUNDAN *v.* MUTTAMMAL . . 3 Mad., 93

OOMRAO BEGUM *v.* KHOOSERAM [1 N. W., 181: Ed. 1873, 260

JONNA VENKATA SAWMY *alias* VENKATASETTI *v.* BASIREDDY KONDAREDDY . . 5 Mad., 364

and SURWAR HOSSEIN KHAN *v.* GHOLAM MAHOMED . . . . B. L. R., Sup. Vol., 879

S. C. SURWAN HOSSEIN *v.* GHOLAM MAHOMED [9 W. R., 170

Overruling PARUSH NATH MISSER *v.* BUNDAH ALI [6 W. R., 132

The cases of GORA CHAND DUTT *v.* LOKENATH DUTT . . . . . 8 W. R., 334

KADARSA RAUTAN *v.* RAVJAH BIBI 2 Mad., 108

LIMITATION ACT, 1877—*continued.*

SEETUL SINGH v. SOORUJ BUKSH SINGH [6 W. R., 318

and LYSTER v. KO MIHONE . . 7 W. R., 354

may also be considered as overruled.

9. ——— *Bond—Instrument creating interest in immoveable property.*—*B*, having borrowed money from *A*, executed in his favour a bond (which was afterwards duly registered), in which he engaged to repay the amount with interest on a day named, and hypothecated certain lands by way of security, with a condition that, in the event of the said lands being sold in execution of decree before the day fixed for repayment, *A* should be at liberty *at once to sue for the recovery of the debt.* Before the term for repayment expired, the mortgaged lands were sold in execution of a decree obtained by another creditor on a second bond made by *B* subsequently and subject to the bond made to *A*. In a suit by *A* against *B* and the purchasers of the lands at the execution-sale, *A* charged *B* personally, and

not run against his claim from that date, but only from the date fixed in the bond for repayment. JUNESWAR DASS v. MAHABEER SINGH [I. L. R., 1 Calc., 163: 25 W. R., 84 L. R., 3 I. A., 1

10. ——— *Suit for money charged on immoveable property.*—*B* obtained a decree on a bond hypothecating certain immoveable property and

11. ——— *Charge on immoveable property—Mortgage—Suit for money lent.*—*A* lent

LIMITATION ACT, 1877—*continued.*

should be paid by him (*B*), and that *A* should pay the rent of the landlord out of the profits of the land without any objection *A* instituted a suit on the 3rd August 1885 to recover the R99 *Held*

BENA UPADHYA . . I. L. R., 14 Calc., 687

13. ——— *Suit for money charged*

R1 8 per cent per mensem, and promised to pay

LIMITATION ACT, 1877—*continued.*

Prasad, I. L. R., 7 All., 502; Gauri Shankar v. *Surju, I. L. R., 3 All., 276*, and *Tadman* v. *D'Epineuil, L. R., 20 Ch. D., 758*, referred to. RAMSIDH PANDE v. BALGOBIND

[I. L. R., 9 All., 158

14. ——————— *Construction of will—Charge on immoveable property.*—A will devising immoveables stated that the father of the devisee had lent a sum of money to the testator, and directed the devisee to repay the debt with interest. This was construed to be a charge on immoveables, and it was held that a suit, brought by the auction-purchaser of the creditor's claim, to recover the above-mentioned debt was within art. 132 of the second schedule of Act XV of 1877, and, having been brought within twelve years from the date when the debt was so charged, was not barred by time. GRISH CHUNDER MAITI v. ANUNDOMOYI DEBI . I. L. R., 15 Calc., 66

[L. R., 14 I. A., 137

15. ——————— *Purchase-money, Suit by vendor to recover.*—The defendants purchased land from the plaintiff, and gave bonds for the purchase-money. These bonds were not registered, and were

[illegible]

[I. L. R., 18 Bom., 48

16. ——————— *Suit for payment of annuity.*—A plaintiff, whose right to receive a yearly payment out of the income of certain immoveable property had been settled by arbitration in the course of a suit in 1864, sued in 1890 to recover from the then holder of the property arrears of such allowance for two years preceding the suit. The plaintiff alleged, but failed to prove, that he and his predecessor in title had received payment of the allowance for the intervening years or any of them. *Held* that the suit was not barred by limitation. *Chagan Lal* v. *Bapubhai, I. L. R., 5 Bom., 68*, followed. GAJPAT RAI v. CHIMMAN RAI

[I. L. R., 16 All., 189

17. ——————— *Suit for kattubadi*—Whe-

[illegible]

that the plaintiff was entitled to a decree for only three years' arrears of kattubadi. VIZIANAGARAM MAHARAJAH v. SITARAMARAZU

[I. L. R., 19 Mad., 100

Contra VENKATARAMA DOSS v. MAHARAJAH OF VIZIANAGRAM . . I. L. R., 19 Mad., 103 note

18. ——————— *Suit for money due on mortgage-bond—Money payable by instalments—Default in payment of instalment—Right to sue for entire amount due on default of payment of any instalment.*—Where, by a mortgage-bond (hypothecating immoveable property) executed by the defendants, a sum of money was made payable by four instalments, the plaintiff to be at liberty in case of any default to sue either for the amount of that instalment or for the whole amount due on the bond, —*Held* that limitation ran from the date of the first default. SITAB CHAND NAHAR v. HYDER MALLA

[I. L. R., 24 Calc., 281
1 C. W. N., 229

19. ——————— *Suit for money lent on mortgage*— [illegible]
—In a mor[illegible]
was stipula[illegible]
repaid "in [illegible]
period of six years" The last day of Jeyth 1289 answered to the 1st June 1882, and the period of six years [illegible]
June [illegible]
12th [illegible]
that [illegible]
June 1882, and the suit was in time. *Rungo Bajaji* v. *Babaji, I. L. R., 6 Bom., 88; Almas Banee* v. *Mahomed Raja, I. L. R., 6 Calc., 239*, and *Gnana-* [illegible]

[I. L. R., [illegible] 382

20. ——————— *Hypothecation-bond for payment on certain date—On default in payment of interest whole amount payable on demand—Meaning of "payable on demand."*—Where a [illegible] for the repayment of the

[illegible]

Hanmantram Sadhuram Pity v. *Bowles, I. L. R., 8 Bom., 561*, and *Hall* v. *Stowell, I. L. R., 2 All., 322*, distinguished. PERUMAL AYYAN v. ALAGIRISAMI BHAGAVATHAR . . I. L. R., 20 Mad., 245

21. ——————— *Interest on mortgage-bond.*—Where a mortgage-bond stipulated that interest at a certain rate should be paid annually and there were no words limiting this liability to the time [illegible]

[illegible]

[I. L. R., 22 Bom., 107

22. ——————— and art. 120—*Suit on mortgage-bond to recover amount by sale of property—Personal liability of mortgagor—Cause of action.*—By a mortgage-bond, dated the 28th Magh 1281 B.S. (9th February 1875), it wa[s]

LIMITATION ACT, 1877—*continued.*

persons and other properties of the mortgagors. It was further agreed that the principal and interest secured by the bond should be repaid in the month of Magh 1282 (January-February 1876). In a suit instituted on the 9th October 188‑ upon the mortgage to recover the amount due by the sale of

gagors in the event of the first remedy against the mortgaged property proving insufficient to pay the debt in full, and consequently that the cause of action against the persons of the mortgagors accrued upon the date on which the mortgage-money became due; and as the suit was instituted more than six

refers to suits to enforce payment of money charged upon immoveable property by the sale of such property. MILLER *v.* RUNGA NATH MULLICK

[I. L. R., 12 Calc., 389

See CHETTAR MAL *v.* THAKURI

[I. L. R., 20 All., 512

23. ———— *Suit to enforce charge under mortgage-deed* —*Held* that a suit to enforce the charge under a mortgage deed is a suit of the nature mentioned in cl. 12, s. 1, and can be brought at any time within twelve years. KOONJ BEHARY LALL *v.* RAJ NARAIN . . . 2 Agra, 244

MANNU LALL *v.* PEGUE

[9 B. L. R., 175 note: 10 W. R., 379

GOKALBHAI MULCHAND *v.* JHAVER CHATURBHUJ

[8 Bom., A. C., 61

24. ———— *Mortgage — Interest — Charge on land.*—In suits to recover the principal and interest of a loan secured by a mortgage of immoveable property, interest for twelve years is recoverable by virtue of art. 132 of sch. II of the Limitation Act, 1877. DAVANI AMMAL *v.* RATNA CHETTI . . I. L. R., 6 Mad., 417

25. ———— *Money charged on im-*

mortgage but prayed only for a money decree.

LIMITATION ACT, 1877—*continued.*

bring the suit under art. 132 of Act XV of 1877. *Held* that plaintiff was too late in bringing a suit for a money-decree on the promise to pay in the mortgage, inasmuch as the article referred to was meant to apply to suits brought to enforce against the property payment of "money charged upon immoveable property," and not, under any circumstances whatever, to a suit for a mere money-decree. PESTONJI BEZONJI *v.* ABDOOL RAHIMAN

[I. L. R., 5 Bom., 463

26. ———— *Mortgage — Suit by a mortgagee to recover debt from a mortgagor*

becomes due applies. *Pestonji Bezonji v. Abdool Rahiman, I. L. R., 5 Bom.*, 463, overruled. LALLUBHAI *v.* NARAN . . I. L. R., 6 Bom., 719

27. ———— and art. 120—*Sale for arrears of revenue—Lien of mortgagee on balance of sale-proceeds—Transfer of Property Act (IV of 1882), s. 73—Mortgage suit—Charge on proceeds of revenue sale—Revenue-paying estate—Act XI of 1859, s. 53.*—When a mortgaged property, being a revenue-paying estate, is sold free from all incumbrances for arrears of revenue, the lien of the mortgagee is transferred from the property itself to the balance of the sale-proceeds which remains after satisfying the Government demand. The time within which a suit can be brought to

sale-proceeds will be governed by art. 132 of the Limitation Act. Even if the original cause of action

ABUL BARKAT *alias* HABIBULLA

[I. L. R., 27 Calc., 180

28. ———— *Interest—Bom Reg. V of 1827, ss 11 and 12—Act XXVIII of 1855—Act XIV of 1870—General Causes Consolidation Act (I of 1868)—Damdupat—Rule.*—The mortgagor of an estate gave to the mortgagee, subsequently

and that redemption of the mortgage should not be claimed until the bond had been satisfied. The assignee of the equity of redemption sued for possession of the estate on payment merely of the

LIMITATION ACT, 1877—*continued.*

mortgage-money. *Held* that s. 12 of Regulation V of 1827 is not in force. That section was repealed by Act XXVIII of 1855, s. 1, and although the latter section was repealed by Act XIV of 1870, the former was not restored, there being no express provision in Act XIV of 1870 to revive it, as required by the General Clauses Act (I of 1868, s. 3). The question of the period for which interest was to be allowed was therefore to be determined by Act XV of 1877, the Act in force at the date of the institution of this suit, art. 132 of which applied, but as the rule of damdupat is not affected by Limitation Acts, the defendants could not be allowed as interest more than the amount of the principal on which it was to be paid. HARI MAHADAJI *v.* BALAMBHAT RAGHUNATH . I. L. R., 9 Bom., 233

29. ——————— *Suit by mortgage to* [illegible] *ey charged the person to enforce Limitation* [illegible] *ief against* [illegible] *illubhai v Naran, I. L. R., 6 Bom., 719,* dissented from. RAGHUBAR DAYAL *v.* LACHMIN SHANKAR [I. L. R., 5 All., 461

30. ——————— *Periods respectively applicable to personal demands and to claims charged on immoveable property.*—That there is a personal liability upon an instrument charging a debt upon immoveable property does not carry with it the effect that the period of limitation fixed for personal demands by Act IX of 1871 is extended, by reason of this demand being thereby brought within the meaning of art. 132 of sch. II of that Act, which applies to claims "for money charged upon immoveable property." A mortgagee of lands sought, after the lapse of more than six years from the date when the mortgage-money was payable, to enforce two distinct remedies, the one against the property mortgaged and the other against the mortgagor personally, on the contract to repay the mortgage-money. *Held* that art. 132 above mentioned applied only to suits to raise money charged on immoveable property out of that property; and the twelve years' bar did not apply to the personal remedy, as to which the shorter period prescribed in art. 65 of the same schedule applied. RAM DIN *v.* KALKA PRASAD

[I. L. R., 7 All., 502: L. R., 12 I. A., 12

31. ——————— *Unpaid purchase-money—Suit to recover the money from the vendee personally and from the property sold—Personal remedy—Limitation Act, sch. II, art. 111.*—Unpaid purchase-money is a charge on the property in the possession of the vendee, and a suit to enforce it against the property so charged falls under art. 132 of the Limitation Act (XV of 1877). But the article does not extend the time allowed otherwise under the Act to claims to recover the money from the defaulter personally or his other property. The limitation for the personal remedy is three years under art. 111. *Virchand v. Kumaji, I. L. R., 8 Bom., 48,* and *Ram Din v. Kalka Prasad, I. L. R., 7 All., 502 : L. R., 12 I. A., 12,* followed. Where certain land was sold and possession given to the vendee in 1890, and a suit was brought in 1895 to recover the unpaid purchase-money from the vendee personally as well as from the property sold, —*Held* that the personal claim was time-barred. CHUNILAL *v.* BAI JETHI I. L. R., 22 Bom., 846

See NATESAN CHETTI *v.* SOUNDARAJA AYYANGAR [I. L. R., 21 Mad., 141

32. ——————— *Transfer of Property Act (IV of 1882), s. 55, sub-s. 4 (b)—Vendor's lien—Suit to enforce charge against the property.*—*Held* that a suit by a vendor of immoveable property [illegible] *Bom., 48,* and *Chunilal v. Bai Jethi, I. L. R., 22 Bom., 846,* followed. *Natesan Chetty v. Soundararaja Ayyangar, I. L. R., 21 Mad., 141,* dissented from. *Ramdin v. Kalkapershad, L. R., 12 I. A., 12; Sutton v. Sutton, L. R., 22 Ch. D., 511;* and *Toft v. Stevenson, 5 De G. M. & G., 735,* referred to. HAR LAL *v.* MUHAMDI [I. L. R., 21 All., 454

33. ——————— and art. 147—*Hypothecation.*—In 1884 *N* sued *A* to recover the principal and interest due on a registered bond executed in 1870. It was stipulated that the amount should be repaid with interest in 1871, and certain immoveable property was hypothecated as security for repayment of the debt. *Held* that the suit did not fall under art. 147 of sch. II of the Limitation Act, which allows sixty years to a mortgagee to sue for foreclosure or sale from the date the money becomes due, but under art. 132 of the same schedule, which allows twelve years to enforce a payment of money charged on immoveable property. ALIBA *v.* NANU [I. L. R., 9 Mad., 218

34. ——————— *Suit for sale of immoveable property by a creditor who has a right* [illegible] sale by a creditor having a right to realize a charge not amounting to a mortgage. KHEMJI BHAGVANDAS GUJAR *v.* RAMA . I. L. R., 10 Bom., 519

35. ——————— *Suit for dower as a charge on immoveable property in hands of heir.*—A suit by a Mahomedan widow against the heir, who has ousted her, for her dower, as being a lien on landed property, was held to be governed by cl. 12, s. 1, Act XIV of 1859. JANEE KHANUM *v.* AMATOOL FATIMA KHATOON . . . 8 W. R., 51

36. [illegible] dent on de- [illegible]

LIMITATION ACT, 1877—*continued.*

37. ——————— *Suit for money charged on rents and profits—Suit for money charged on immoveable property.*—K borrowed from C a sum of R571, and at the same time executed a bond whereby he mortgaged usufructuarily to his creditor his "entire right and share" in a particular estate in lieu of the above-mentioned sum, and it was agreed that C might realize the debt from the rents and profits of two years, and that, as soon as it had been realized, his possession should cease. *Held* that the money borrowed by K was "money charged upon immoveable property," it being charged upon rents and profits *in alieno solo* which in English Law would be classed as "incorporeal hereditaments," but which by the laws of India are included in immoveable property, and that therefore the limitation applicable to a suit for the recovery of the money was that provided in art. 132, sch. II of Act XV of 1877. *Dalu v. Bahadur, I. N. W., 55,* and *Pes-*

38. ——————— *Suit for share of Government revenue and for declaration that estate is charged*

asks to have the amount so paid made a charge on the portion for which he paid it, is governed by art. 132, and not by art. 99 of Act XV of 1877. RAM DUTT SINGH *v.* HORAKH NARAIN SINGH

[I. L. R., 6 Calc., 549. 8 C. L. R., 209

DEO NUNDUN AGHA *v.* DESPUTTY SINGH

[8 C. L. R., 210 note

39. ——————— *Suit to establish title and for arrears.*—The plaintiff sued the defendants to recover a share of the income of a certain watan which was admitted to be connected with an hereditary office, but was not, strictly speaking, charged upon immoveable property. In 1861 the plaintiff

for twelve years, *viz.*, from 1862 to 1874. He admitted that he had received no payment for the year 1861, and that his claim for that year was barred. The defendants contended that the period of

much of the arrears as was time-barred under that Act

LIMITATION ACT, 1877—*continued.*

hereditary offices, and all payments or allowances made on account of such offices, are to be regarded as immoveable property within the meaning and intention of that Act, and are therefore governed by the provisions of *cl. 12* of *s. 1.* It was also contended on behalf of the defendants that, even if the period of limitation were held to be twelve years, the plaintiff's claim was nevertheless barred *in toto,* inasmuch as he admitted that he had received no payment on account of his share for thirteen years preceding the institution of the suit. In support of this contention, the cases of *Raiji Manor v. Desai Kallianrai, 6 Bom., A. C., 56,* and *Madvala v. Balvant, 9 Bom., 260,* were cited, where it was laid down that the cause of action to establish title and the cause of action to recover arrears which rest on such title are not distinct and independent of

arrears accruing due under such title, the same rule does not apply where, as in the present case, the plaintiff has in a former suit obtained a decree

BAPUBHAI . I. L. R., 5 Bom., 68

40. ——————— *Debt not charged on immoveable property—Hindu widow—Reversioner.* —A widow purported to charge land which she held for her widow's estate with payment of a debt, and

than six years from the time when the debt had become payable,—*Held* that, unless the debt had been effectively charged on immoveable property within art. 132, sch. II of the Limitation Act, 1877, the suit would be barred, and the charge alleged to have been made on immoveables was found not to have been in fact a binding one. KAMESWAR PERSHAD *v.* RAJKUMARI RUTTAN KOER

[I. L. R., 20 Calc., 79
L. R., 19 I. A., 234

41. ——————— *Suit to enforce mortgage by father against sons.*—A suit to enforce against the sons a mortgage-bond executed by their father is governed by art. 132 of sch. II of the Limitation Act. PRAN KRISHNA TEWARY *v.* JADU NATH TRIVEDY

[2 C. W. N., 603

LIMITATION ACT, 1877—*continued.*

42. ———— and arts. 99 and 120 —*Contribution, Suit for—Sale of mortgaged pro-*

included in the mortgage, and does not claim from

contribution is governed by the limitation provided by art. 132, and not by that provided by art. 99 or art 120 of sch. II of the Limitation Act (XV of 1877), and must be instituted within twelve years from the date of confirmation of sale. *Ram Dutt Singh* v *Horakh Narain Singh, I. L. R., 6 Calc., 549,* and *Pancham Singh* v *Ali Ahmad, I. L. R., 4 All., 58,* referred to. IBN HUSAIN *v.* RAMDAI

[I. L. R., 12 All., 110

43. ———— and arts. 135 and 147 —*Suit on a mortgage-bond—Conditional sale—Foreclosure—Beng Reg. XVII of 1806, ss 7, 8—Transfer of Property Act (IV of 1882), s. 67, cl. (a).*—In a suit for possession of land on the allegations that it was mortgaged by the defendant's father in July 1849 to the plaintiffs' predecessors, by way of conditional sale, by a deed which fixed no time for payment and made no provision as to the mortgagee taking possession; that the mortgagor made various payments down to 1875; and that subsequently foreclosure proceedings were instituted under Regulation XVII of 1806, and the mortgage foreclosed in 1877, the lower Appellate Court found that the deed was duly executed, but that the foreclosure proceedings were irregular and invalid *Held* that, inasmuch as the deed fixed no time of payment, and the suit was brought more than twelve

ation Act Having regard to the provisions of s. 67, cl. (*a*), of the Transfer of Property Act, the mortgage being by conditional sale, the mortgagee was not entitled to the remedy by sale, and therefore art 147 did not apply to the case. *Girwar Singh* v. *Thakur Narain Singh, I. L. R., 14 Calc., 730,*

44. ———— *Mortgage—Usufructuary mortgage—Further mortgage of the same property—Destruction of mortgaged property by diluvion—Transfer of Property Act (IV of 1882), s. 68,*

LIMITATION ACT, 1877—*continued.*

Right to sue under.—Plaintiffs advanced money on an usufructuary mortgage of certain land in Magh 1280 (January 1873), and subsequently advanced another sum of money in Sraban 1280 (July 1873) on the security of the same land. The land was washed away in 1892. In an action brought in 1894 under s. 68 of the Transfer of Property Act (IV of 1882) for the money of both the mortgages on the ground that the defendants declined to give fresh security, the defendants objected that the claim as regards the mortgage of Sraban 1280 was barred before the inundation under cl. 132, sch. II of the Limitation

of the property until the moneys had been repaid, were clearly entitled to have the money substituted for the property. RAM JEWAN MISSER *v.* JUGGERNATH PERSHAD SINGH . I. L. R., 25 Calc., 450

45. ———— and art. 147—*Suit on a mortgage-bond—English mortgage—" Mortgage"*

Charan Sen, I. L. R., 12 Calc., 111, overruled. *Shib Lal* v *Ganga Pershad, I. L. R., 6 All., 551,* dissented from. The clear distinction drawn for the first time between "mortgage" and "charge" in the Transfer of Property Act is not observed in the Limitation Act. GIRWAR SINGH *v.* THAKUR NARAIN SINGH . . . I. L. R., 14 Calc., 730

46. ———— and art. 147—*Transfer of Property Act (IV of 1882), ss. 59, 100—Hypothecation-bond.*—The period of limitation for suits upon hypothecation-bonds, which contain no power of sale, or effect no transfer of property, executed before the Transfer of Property Act came into operation, is twelve years under sch. II, art. 132, of the Limitation Act of 1877. *Aliba* v. *Nanu, I. L. R., 9 Mad., 218,* followed. *Per* MUTTUSAMI AYYAR, J.—"The transaction in suit appears to be of the kind described in s. 100 of the Transfer of Property Act, which defines how a charge is created," but "it seems to me that the Transfer of Property Act does not invest all prior hypothecations with the rights and liabilities arising from simple mortgages, whether or not those transactions satisfy the requirements of the definition it contains of simple mortgages." RANGASAMI *v.* MUTTUKUMARAPPA I. L. R., 10 Mad., 509

47. ———— *Suit on a hypothecation-bond, dated 1876 (before Transfer of Property Act),*

LIMITATION ACT, 1877—*continued.*

to secure money payable on demand.—In a suit to recover principal and interest due on a hypothecation-bond executed before the Transfer of Property Act was passed to secure a loan payable on demand, it appeared that the plaint was filed more than twelve

48. ———— and art. 147—*Mortgage—Suit for sale.*—On 2nd July 1879 the defen-

CHANDRA RAYAGURU *v.* MODHU PADHI
[I. L. R., 21 Mad., 326

49. ———— *"On demand"—Accrual*

the money *Held* that the suit was not barred by limitation. NETTAKARUPPA GOUNDAN *v.* KUMARASAMI GOUNDAN . I. L. R., 22 Mad., 20

———— art. 134 (1871, art 134; 1859, s. 5)

3. ———— *Bonâ fide purchaser—Property belonging to idol*—In 1799 an estate was purchased in the name of an idol, and immediately afterwards was mortgaged. Subsequently, when the mortgage-debt had been paid off, it was reconveyed to the idol. After this, the names of the idol and of its shebait were entered in the Collector's books as owners of the estate. In 1812 the purchaser again

LIMITATION ACT, 1877—*continued.*

of the property as belonging to the idol, alleging that the purchaser was a mere trustee for the idol, that the present holders of the property were cognizant of this, or might have learnt it by reasonable enquiry, and therefore took the property subject to the trust; and that accordingly the suit now brought was a suit against a trustee within s. 2, Act XIV of 1859, and could not be barred by any length of time. There was no evidence of a formal dedication of the property to the idol *Held* that the defendant claimed under the purchasers who had purchased *bonâ fide* and for valuable consideration within s. 5,

S C. on appeal to Privy Council
[15 B. L. R., P. C, 176 note: 20 W. R., 95

4. ———— *Endowed property—Suit to have land declared wukf.*—In the case of wukf land, the mere stoppage of religious service does not start limitation. In a suit, therefore, to have land sold declared wukf and therefore unalienable, the cause of action arises not from the cessation of services, but from the date of the sale. DOYAL CHAND MULLICK *v* KERAMUT ALI . . 16 W. R., 116

A suit by a mutwali for endowed property alienated would probably come within this article.

See LALL MAHOMED *v.* LALL BRIJ KISHORE
[17 W R., 430

5. ———— *Mortgage of endowed property—Suit for recovery of property*—Certain landed property alleged to have been sold to an idol, and registered in the name of the vendee's infant son as shebait, had, after the death of that son, been mortgaged twice by the vendee, who succeeded to

GOBIND NATH ROY *v.* LUCHMEE KOOMAREE
[11 W. R., 36

6. ———— *Suit to remove trustee and recover possession of trust property from third party—Civil Procedure Code (1882), s 539*—Art. 134 of the second schedule of the Indian Limitation Act (XV of 1877) applies to a suit for the dismissal of a trustee and for the recovery of trust

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LIMITATION ACT, 1877—*continued.*

7. ——————— *Suit against purchasers by representative of mortgagor.*—In a suit by the representative of a mortgagor against *bona fide* purchasers for valuable consideration from the mortgagee,—*Held* that the period of limitation was twelve years from the date of the purchase, under s. 5, Act XIV of 1859. SITHA UMMAL *v.* RUNGASAMI IYENGAR . . . . 5 Mad., 365

8. ——————— *Mortgage by member of joint Hindu family—Bonâ fide purchaser.*—To entitle a purchaser to claim the benefit of Act XIV of 1859, s 5, he must prove,—1st, that he is a purchaser of what is represented to him, and what he fully believes to be not a mortgage, but an absolute title; 2nd, that he purchased *bonâ fide*,—that is to say, without a knowledge of the title having been originally a mortgage, and of a doubt existing as to the mortgage having ceased, and 3rd, that he is a purchaser for valuable consideration. Where an estate having been originally mortgaged by *K*, a member of a joint Hindu family, he subsequently, without the knowledge of the other members, released the equity of redemption to *R*, who afterwards sold to *H*, the owner of a factory, who afterwards sold to *G & Co.* the factory with the lands appertaining thereto,

purchasers entitled to the protection of Act XIV of 1859, s 5. *Held* also that s. 10 does not apply in such a case, although *K* acted fraudulently RADHANATH DAS *v.* ELLIOTT . . 6 B. L. R., 530

S C. RADHANATH DAS *v.* GISBORNE & Co
[14 Moore's I. A., 1: 15 W. R., P. C., 24

Reversing the decision of the High Court in GISBORNE & CO. *v.* RADHANATH DAS . 5 W. R., 253

9. ——————— *Mortgage—Purchaser from mortgagee—Necessity of possession in order to validate transaction as against original mortgagor.*—A person purchasing or taking a mortgage from a mortgagee believing that he is getting a good title must have possession of the property for the statutory period in order to validate the transaction as against the original mortgagor under art. 134 of the Limitation Act (XV of 1877) RAMCHANDRA VITHAL RAJADHIKSHA *v.* MOHIDIN
[I. L. R., 23 Bom., 614

10. ——————— *Sale of property by representatives of mortgagee.*—The sale of mortgaged property by the heirs of a mortgagee after it has been held and enjoyed by them upwards of sixty years does not give a fresh cause of action to the representatives of the mortgagor. RAM DHUN BHUGGUT *v.* GUNESHEE MAHTOON 16 W. R., 96

11. ——————— *Bonâ fide purchaser.*—A

purchaser. JUGGURNATH SAHOO *v.* SHAH MAHOMED HOSSEIN . . . . 14 B. L. R., 386
[23 W. R., 99: L. R., 2 I. A., 49

12. ——————— *Mortgage—Sub-mortgage by mortgagee—Suit for redemption by original mortgagor against mortgagee and sub-mortgagees—*

consideration" in art. 134 of the Limitation Acts (IX of 1871 and XV of 1877) includes a mortgagee as well as a purchaser properly so called *Semble*—The words "*bonâ fide,*" which appeared in art 134, sch. II of the Limitation Act (IX of 1871), were advisedly omitted from art. 134, sch. II of the Limitation Act (XV of 1877), to exclude the possible inference that absence of notice of the real owner's claim was necessary to enable a purchaser to avail himself of the article. YESU RAMJI KALNATH *v.* BALKRISHNA LAKSHMAN
[I. L. R., 15 Bom., 583

13. ——————— *Mortgage—Sub-mortgage—Suit for redemption*—In 1864 *A* mortgaged the property in dispute with possession to *B*. *B* and his widow after his death sub-mortgaged various portions of it to *S* (defendant No 3) in 1864, 1866,

Held that art 134 did not apply, as the language

14. ——————— *Mortgage—Decree obtained by mortgagee for possession until payment of mortgage-debt—Possession taken by mortgagee under decree—Continuance after decree of relation of mortgagor and mortgagee—Sale by mortgagee—Vendor and purchaser—Subsequent suit for redemption by mortgagor against mortgagee and his*

possession, and subsequently sold the property to a third party. More than twelve years after the sale, the mortgagor brought a redemption suit both as against the mortgagee and the purchaser. *Held* that the suit (as against the purchaser) was barred under art. 134, sch. II of the Limitation Act (XV of 1877), and that, notwithstanding the decree for possession, the relationship of mortgagor and mortgagee continued, whether under the original mort-

LIMITATION ACT, 1877—*continued.*

gage or the decree. Absence of *bonâ fides*, as distinguished from actual knowledge of the vendor's title, does not prevent the purchaser from claiming the benefit of art. 134. In order to give the purchaser the benefit of art. 134, the purchase need not be *bonâ fide* in the sense of being without "constructive notice" of the restricted nature of the vendor's title, but by the term "purchaser" in that article is meant a person who purchases that which is *de facto* a mortgage upon the representation made to him and in the belief that it is an absolute title. PANDU *v.* VITHU . . . I. L. R., 19 Bom., 140

15. ———— *Vendor and purchaser—Bonâ fides—Notice of charitable trust.*—The words "conveyed in trust" in art. 134 of sch. II of the Limitation Act (IX of 1871) include devises in trust, or are equivalent to the words "vested in trust" in s. 10 of the same Act. The words "in good faith" in art. 134 of sch. II, and in s. 10 of the Limitation Act (IX of 1871), do not necessarily involve absence of notice in the purchaser of an existing trust or equity, though the fact of there being such notice may be an important element in the question whether there was *bonâ fides*. The defendant in the present case, though he purchased with actual notice, must, having regard to all the circumstances, be held to have purchased in good faith, and the suit was accordingly barred by limitation, there being nothing in the Limitation Act

16. ———— *Mortgage—Sale of mortgagee's rights and interests for the recovery of arrears of revenue—Suit for redemption—Reg XI of 1822, s. 29—Reg XVII of 1806.*—It was not intended that property which would pass on the sale by a mortgagee of his interest should come within the scope of art 134, sch II of the Limitation Act (XV of 1877) The article was intended to protect, after the expiration of twelve years from the date of a purchase, a person who, happening to purchase from a mortgagee, had reasonable grounds for believing, and did believe, that his vendor had the power to convey and was conveying to him an absolute interest and not merely the interest of a mortgagee *Radanath Doss v. Gisborne & Co, 14 Moore's I A., 1 6 B L. R., 530, Pearey Lal v Saliga, I. L R., 2 All., 394*, and *Kamal Singh v. Batul Fatima, I L R, 2 All., 460*, referred to. Contemporaneously with the execu-

interest, he would accept the same and cancel the sale, and th
period. Th
mortgage b
mained in

LIMITATION ACT, 1877—*continued.*

that of proprietor in the Collector's register, in which no allusion was made to a mortgage. In 1840 his rights in this property were sold by auction for arrears of Government revenue due by him on account of other land, and apparently no notice was given by any one at or prior to the sale that it was the mortgagee's interest only which was about to be or was being sold. The property was purchased for R3,000 by S who took possession, and in 1845 sold it for R3,000 to T who took possession, and in 1847 sold it for the same sum to C On the occasion of each transfer, the name of the transferee was entered in the Collector's register as that of proprietor. No application for foreclosure was made at any time. In

that the several transferees were innocent purchasers for valuable consideration without notice, who had purchased in each case from the person who was, with the consent, express or implied, of the persons for the time being interested, the ostensible owner, and had in each case, prior to the purchase, taken reasonable care to ascertain that the transferor had power to make the transfer and had acted in good faith *Held* that art. 134 of the Limitation Act did not apply to the case, inasmuch as that article referred only to persons purchasing what was *de facto* a mortgage, having reasonable grounds for the belief, and believing that it was an absolute title, and that, having regard to s. 29 of Regulation XI of 1822, to the presumption that the several transferees knew the law and made inquiries as to the interest they were purchasing, and examined the register in which the deed constituting the transaction of 1835 (a mortgage) was registered, and also having regard to the fact that R3,000 only were paid as purchase-money in each case, and to the circumstance that it was doubtful whether a purchaser at a formal auction sale such as that in question could be said to have purchased without notice an absolute interest from the mortgagee, it must be inferred that the transferees knew, or might, or ought to, have known, unless they wilfully abstained from inquiry that the interest which they respectively were purchasing was merely that of a mortgagee. *Sobhag Chand Gulab Chand v. Bhaichand, I L. R, 6 Bom, 193*, referred to *Held* that, as by Regulation XVII of 1806 mortgagors in such a case as the present were entitled to redeem within sixty years, the plaintiffs were entitled to a decree for redemption BHAGWAN SAHAI *v.* BHAGWAN DIN . I. L R., 9 All., 97

17. ———— *Clause of conditional sale in mortgage—Suit by mortgagee for declaration of the title—Decree ordering delivery of property to mortgagee in default of payment of mortgage-debt by mortgagors within one month—Default of payment by mortgagors—Effect of such default—Mortgaged property taken by mortgagee in execution of such decree not as mortgagee, but absolutely—Subsequent suit for redemption.*—In 1863 B and C mortgaged certain land to one G under a

LIMITATION ACT, 1877—*continued.*

mortgage-deed, which provided that, if the mortgage-debt was not paid at the stipulated time, the land should become the absolute property of *G*, the mort-

with the other two defendants (the mortgagors), denied his title. The ejectment suit was subsequently converted into one for a declaration of *G's*

the plaintiff, as *B's* heir and legal representative, filed a suit against *G* and *V* to redeem the property. The Court of first instance dismissed the suit, holding that the plaintiff's claim was *res judicata* by virtue of the decree passed in 1872, and that the right to redeem was lost. On appeal, the Court reversed this decision and passed a decree for redemption on payment of R100 by the plaintiff within six months. The defendant *V* then applied to the High Court under its extraordinary jurisdiction *Held* that the suit was barred under art. 134 of sch. II of the Limitation Act (XV of 1877), *V* having purchased the land for value from *G*, the ostensible owner, more than twelve years before suit. VISHNU CHINTAMAN *v.* BALAJI BIN RAGHUJI

[I. L. R., 12 Bom., 352

18. ——— *Suit to redeem by assignee of equity of redemption - Title purchased at execution-sale.*—Suit, in 1885, by the assignee of the equity of redemption to redeem a mortgage of 1826 The mortgagees were put into possession under the mortgage, and no interest was paid. In 1855 the mortgage premises were sold at a Court-sale in execution of a decree against the mortgagees as if they formed part of their family property, and the defendant derived title from the execution-purchaser, who had dealt with it as absolute owner. *Held* that the suit was barred under the Limitation Act, 1877, sch II art 134 MUTHU *v.* KAMBALINGA . **I. L. R., 12 Mad., 316**

19. ——— *Purchaser for value—Mortgage in 1842—Subsequent mortgage in 1872 by mortgagee representing himself to be owner—Decree on second mortgage—Sale in execution—Purchaser at auction-sale—Right of original mortgagor in 1892 to redeem mortgaged property.*—In 1842 the grandfather of the plaintiff mortgaged the land in question to one *M* with possession. On 9th May 1872, *M's* son, who was then still in possession,

subsequently sold his share to defendant No 4. In 1892 the plaintiff sued the first defendant (the

LIMITATION ACT, 1877—*continued.*

grandson of the original mortgagee *M* under the mortgage of 1842) for redemption, making defendants Nos 2, 3, and 4 party-defendants The defendants contended that they were purchasers for value, and that the suit was barred by art. 134 of the Limitation Act. *Held* that the suit was not barred, and that the plaintiff was entitled to redeem. By the sale in 1881, the interest of defendant No. 1 became vested in them The plaintiff could then have

within twelve years from that date. Though a mortgagee is a purchaser for value, he is not an out-and-out purchaser, but only a purchaser *sub modo.*

value within the meaning of art. 134 of the Limitation Act (XV of 1877). MALUJI *v.* FAKIRCHAND

[I. L. R., 22 Bom., 225

20. ——— *Sale by mortgagee as owner.*

[I. L. R., 21 Mad., 161

21. ——— **and art. 144**—*Suit by trustee to set aside mortgages of trust property made by his predecessor in office.*—A sajjada-nashin in possession of certain waqf property during the years 1864 to 1869 executed various mortgages of portions of the waqf property, professing to do so

recover possession of the mortgaged property, of which the mortgagees were in possession, on the ground that the mortgages were in violation of the trust and therefore invalid. *Held* by the Court that the suit was barred by limitation. *Per* BLAIR, J.—

dates of the mortgagees obtaining possession under their respective mortgages. *Nilmony Singh v. Jagabandhu Roy, I. L. R., 23 Calc., 536; Yesu Ramji Kalnath v. Balkrishna Lakshman, I. L. R., 15 Bom., 583; Bejoy Chunder Banerjee v. Kally Prosonno Mookerjee, I. L. R., 4 Calc., 327;* and *Madhaba v. Narayana, I. L. R., 9 Mad., 244,* referred

LIMITATION ACT, 1877—*continued.*

to. *Per* BANERJI, J.—The suit is barred by art. 134 of the second schedule to the Indian Limitation Act, 1877, which is as much applicable to a suit against a mortgagee for value from a trustee as to a suit against a person to whom the trustee has sold trust property for value. *Gobind Nath Roy* v. *Luchmee Koomaree, 11 W. R., 36*, *Yesu Ramji Kalnath* v. *Balkrishna Lakshman, I. L. R., 15 Bom., 583*, *Maluji* v. *Fakir Chand, I. L. R., 22 Bom., 225*, and *Nilmony Singh* v. *Jagabandhu Roy, I. L. R., 23 Calc., 536*, referred to. *Per* AIKMAN, J.—The term "purchased" as used in art. 134 of the second schedule cannot be taken as including "mortgaged," but art. 144 would apply and be a bar to the suit. BEHARI LAL v. MUHAMMAD MUTTAKI

[I. L. R., 20 All., 482

——— art. 135 (1871, art. 135)

1. ——— and art. 147.—*Mortgagor and mortgagee—Purchaser from mortgagor—Ad-*

(or might properly be inferred) that the mortgagor or the person in possession held by permission of the mortgagor after the date of default. On the 17th of November 1865, certain property situate in the district of the 24-Pergunnahs was mortgaged by the owner thereof to secure the repayment of R15,785 with interest at 18 per cent on the 17th of February 1866. The mortgagor and mortgagee were Hindus, and the mortgage was in the ordinary form of an English mortgage of real property. After the date of the mortgage, and before the 15th of February 1872, the mortgagor sold various portions of the mortgaged property. On the 15th of February 1872 the mortgagee filed a foreclosure petition in the Court of the Judge of the district of the 24-Pergunnahs under Regulation XVII of 1806. Notice of the petition was served on the mortgagor alone. Neither principal nor interest was paid by the mortgagor, and on the 6th of September 1882 the assignee of the mortgagee filed a suit for foreclosure against the mortgagor, and the purchasers of the various portions of the property, under the provisions of the Transfer of Property Act, praying for foreclosure and sale. *Held* that as against the purchasers from the mortgagor the suit was barred by limitation under cl. 135, sch. II of Act XV of 1877. SHURNOMOYEE DASI v. SRINATH DAS

[I. L. R., 12 Calc., 614

by annual instalments in nineteen years, and empowering the mortgagee to foreclose if two instalments remained unpaid on any third yearly instalment falling due. *Held*, on the construction of the mortgage-deed, that the mortgagee was not thereby limited to foreclose as soon as the first default in payment of those instalments occurred, and not afterwards; but that the mortgagee was authorized

LIMITATION ACT, 1877—*continued.*

in proceeding to foreclose ...

repudiated, but recognized. The mortgagee's right

3. ——— *Mortgage—Dispossession*

which the mortgagor remains in peaceable and undisturbed possession of the estate. But when the mortgagor is dispossessed and his title disputed, and another person obtains possession of the estate, the possession of the new holder becomes adverse to both mortgagor and mortgagee. The mortgagee's cause

which has been confirmed by the Courts. RAMCOOMAR SEIN v. PROSONNOCOOMAR SEIN

[W. R., 1864, 375

See SHEOUMBER SAHOO v. BHOWANEEDEEN KULWAR . 2 N. W., 223

4. ——— *Suit for possession—Mortgagor transferee, Possession by.*—In 1835, *A*,

gages. *Held* that *A* was not barred by the statute of limitations from asserting his title to the land subject to the prior mortgages. BHUGWAN DOSS v. BEHARY KHAN . Marsh., 191 : 1 Hay, 437

5. ——— *Suit for possession after foreclosure of mortgage—Adverse possession—*

LIMITATION ACT, 1877—*continued.*

High Court that the plaintiff's claim was barred by limitation. *Held* also that the dar-patnidar's occupation of the patni after his lien on it had expired was an adverse possession, which the plaintiffs were bound to resist as soon as they became aware of it, and that this obligation was not loosened by the fact that the mortgagees, on the expiry of their lien, were bound to find out the owners and deliver up the estate to them. KANTI CHUNDER MOOKERJEE *v.* BAMUN DOSS MOOKERJEE

[25 W. R., 434

6. ———— *Purchaser from mortgagor—Adverse possession.*—Where a party *bonâ fide* purchased from another as his own property land in fact mortgaged, and obtained possession and muta-

to the mortgagee of the right of entry under the mortgage-deed (which was in the English form), the mortgagee sued the purchaser to obtain possession of the property. *Held* the suit was barred. *Quære*—Whether in cases in the mofussil, where the mortgagor continues in possession, paying rent to the mortgagee, the law of limitation begins to run from the date of the right of entry. BRAJANATH KUNDU CHOWDHRY *v.* KHELAT CHANDRA GHOSE

[8 B. L. R., 104 : 14 Moore's I. A., 144
16 W. R., P. C., 33

S. C. in High Court, KHELAT CHUNDER GHOSE *v.* TARACHURN KOONDOO CHOWDHRY 6 W. R., 269

7. ———— *Adverse possession—Purchaser at a sale in execution of decree.*—The possession of a purchaser at the sale in execution of decree, without notice of a mortgage of the property, is adverse to the mortgagee, and a suit to disturb his possession must be brought within twelve years of

Affirming decision of High Court in DHURUNDHO CHUNDER MOOKERJEE *v.* ANNUND MOYEE DOSSEE

[1 W. R., 103

8. ———— *Suit for possession—Conditional mortgagee, Title of.* It is not necessary for a conditional mortgage, if he be in possession at the expiry of the year of grace, to bring a suit to complete his title. The limitation period should be computed from the expiry of the year of grace, if the mortgagee be then in possession. KHOOB CHUND *v.* LEELA DHUR . . . . 3 Agra, 103

9. ———— *Mortgage—Suit for possession—Foreclosure—Beng. Reg. XVII of 1806, s. 8—Cause of action.*—A, by a Bengali deed of conditional sale, dated the 10th of August 1853, mortgaged two estates, the deed providing that the debt should be repaid on the 9th of July ... that, on default of payment, the deed of ... sale should become one of absolute sale, ... mortgagee should thereupon acquire the ... tary right, and might enter upon and retain possession of the mortgaged property. A failed to pay at the time stipulated, and on the 18th of December 1856 her right, title, and interest in

1865 against the defendants, the auction-purchasers. In a suit instituted by the plaintiff on the 22nd January 1874 against the auction-purchasers to recover possession of the mortgaged property,—*Held* that the cause of action arose on 9th July 1865, when default was made in payment of the mortgage-debt, and the suit, not having been instituted within twelve years from that date, was barred by s. 1, cl. 12, Act XIV of 1859. No new cause of action arose by reason of the foreclosure proceedings on the expiry of the year of grace in August 1868 DENONATH GANGOOLY *v.* NURSING PROSHAD DASS

[14 B. L. R., 87 : 22 W. R., 96

10. ———— *Mortgage—Suit for possession—Foreclosure—Cause of action.*—The defendant mortgaged certain immoveable property to the plaintiff by a bye-bil-wafa, or deed of conditional sale, dated 20th January 1851. The deed stipulated that the mortgage-debt should be repaid on the expiration of three years from the date of the execution. The money was not repaid at the stipulated period, and the mortgagor remained in posses-

that the suit was barred, the plaintiff having been out of possession for more than twelve years previous to the institution of the suit. *Held* that payment ... of interest was evidence of the con- ... e parties ... the mort- ... mortgagee, ... issive, and ... MANEER KOOER *v.* MUNNOO

[14 B. L. R., 315 : 23 W. R., 543

11. ———— *Suit for foreclosure of mortgage—Cause of action.*—The plaintiff, on the 2nd of August 1847, became mortgagee of a house under an instrument of mortgage, which provided that, in default of payment by the mortgagor of the mortgage loan within five years, the house should be considered as absolutely sold to the mortgagee. Default was made in payment and the mortgagee entered into possession, and continued in possession until 18... by the mortgagor ... suit in ... mortgag... of limitation. *Held* that the plaintiff's cause of action arose in 1858, when he was dispossessed by the defendant, and that he had, under Act XIV of 1859, s. 1, cl. 12, twelve years from that date within which

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LIMITATION ACT, 1877—*continued.*

rights the purchaser is clothed LAKSHMAN VINAYAK KULKARNI *v.* BISANSING I. L. R., 15 Bom., 261

2 ———— *Suit for possession of a tenure by a purchaser from the purchaser from a third person who bought at an auction, but never obtained possession—Civil Procedure Code (1882), s 316—Confirmation of sale—Limitation Act, art. 139.*—In a suit for possession of a tenure by a purchaser, whose vendor purchased it at a private sale from a third person who bought at an auction, but

was confirmed, and consequently the suit was not barred MOHIMA CHUNDER BHUTTACHARJEE *v.* NOBIN CHUNDER ROY I. L. R., 23 Calc., 49

3 ———— and art 137—*Ejectment.* —On the 26th of September 1867, *A* executed a conveyance of certain land to *B* for valuable consideration. On the same day *A* acknowledged the execution of the deed before the Registrar, who afterwards registered the same on the 19th of October 1867; *B* never entered into possession of the land On the 14th of November 1874, *C* purchased this land at a sale in execution of a decree which he had obtained against *B*, *C* did not enter into possession of the land,

JAMIN . I. L. R., 11 Calc, 229

4 ———— and art 144—*Hindu law —Joint family property, Suit to recover—Purchaser of a share of joint family property when vendor is out of possession* —In a suit for a share of a joint family property where the claimant is out of possession, the material issue is when did the possession of the defendant become adverse to the plaintiff or the person under whom he claims

———— art. 137—*Mortgage of joint property — Share of co-owner sold in execution of decree—Subsequent sale of the mortgaged property by all co-owners – Redemption of mortgage—Suit for partition and redemption by purchaser at Court-sale—Adverse possession* —Three undivided brothers (*B*, *E*, and *A*) mortgaged part of their joint property (plot 1) in 1870, and the rest (plot 2) in 1874 In 1875 *B*'s share in both plots was sold in execution

LIMITATION ACT, 1877—*continued.*

of a decree against him and was purchased by the plaintiff. In 1877 *B* and his two brothers sold plot 1 to defendants Nos. 3—6, who at once paid off the mortgage of 870 and took possession On the 11th February 1877, the three brothers paid off the mortgage of 1874 of plot 2, and in the same month mortgaged that plot to the defendants with possession On the 26th August 1890, the plaintiff sued for possession of *B*'s share by partition and redemption if necessary. *Held* that the suit was barred by art. 137 of the Limitation Act (XV of 1877). *B* became entitled to possession of his share of plot 1 in 1877, when the mortgage of 1870 was paid off by the [illegible]

Bom., 423; *Bhaudin* v. *Shaik Ismail*, *I. L. R.*, 11 *Bom.*, 425; *Faki Abas* v. *Faki Nurudin*, *I. L. R.*, 16 *Bom.*, 191, and *Naro* v. *Ragho*, *P J.* 1892, p 412, referred to. GANESH MAHADEO BHANDARKAR v. RAMCHANDRA SAMBHAJI MHASKAR

[I. L. R., 20 Bom, 557

————art. 138 (1871, art. 138).

See RIGHT OF SUIT— FRESH SUITS.

[I. L. R., 9 Calc, 602

1. ———— *Suit for possession by purchaser at sale for arrears of revenue—Cause of action.*—Under the general Law of Limitation, the cause of action in a suit for possession by an auction-purchaser at a sale for arrears of revenue arises from the date of purchase. HURREE MOHUN THAKOOR v. ANDREWS . . . W. R., 1864, 30

2. ———— *Sale in execution of decree* [illegible]

bill-of-sale, but too late counting from the time of the actual auction-sale,—*Held* that the plaintiff was barred MOHESH CHUNDER CHATTERJEE v. ISSUR CHUNDER CHATTERJEE 1 Ind. Jur, N. S., 266

3. ———— *Purchase by mortgagee of* [illegible]

gagee was superseded by his possession as purchaser, and that the Statute of Limitation commenced to run from the beginning of his possession as such purchaser. BYKUNT DUTR SINGH v. LALLA BHUGOBUT SAHOY . . Marsh, 391: 2 Hay, 475

4. ———— *Suit by purchaser at sale for arrears of rent of patni tenure—Cause of action—Adverse possession.*—*A* let an under-tenure to *B*, which under-tenure was sold for arrears of rent under s. 105, Act X of 1859, and bought in by *A*. On proceeding to take possession, *A* found that *C*

LIMITATION ACT, 1877—*continued.*

had trespassed upon the under-tenure during *B*'s tenure, and had held possession for more than twelve years. *A* sued to recover possession of the under-tenure, and it was held by the senior Judge of the Division Bench (BAYLEY, *J.*) that *A*'s cause of action was the act of dispossession by *C*, and that the suit was barred, more than twelve years having elapsed; and that *A*'s right to sue was not affected by the fact that *B*'s tenure was still running. The junior Judge (PHEAR, *J.*) held that the suit was not barred; that the cause of action to *A* accrued when he obtained back the property at the auction-sale; and that during the period of encroachment the cause of action did not arise to *B* and pass from *B* to *A* during the time the patni lasted, the patni entirely disappearing in the superior title of zamindar vendee *Held* by the Appellate Court, in confirmation of the view of PHEAR, *J.*, that the cause of action to *A*, who was a purchaser of an estate free from incumbrances against *C*, who was a trespasser, and had encroached on *B*, the defaulter, must be taken to accrue at the same time as his, *A*'s, right to turn out under-tenants of the defaulter,—*viz*, from the time of the [illegible] and the fact [illegible]

[10 W. R., 15

See RAJNARAIN ROY v. WOOMESH CHUNDER GOOPTO . . . . . 8 W. R., 444

5. ———— *Survey proceedings—Suit* [illegible]

defendants were still in possession [illegible] belonging to them and other neighbouring proprietors; but that it was necessary for them to show that they themselves were in possession of the disputed lands at the time when they granted the patni to the defendants, and that they made over that possession to those defendants at that time GOPAL KISHEN SIRCAR v. RAM NARAIN KOONDOO

[17 W. R., 175

6 ———— *Suit for possession—Cause of action.*—Where formal possession was given by the Court, but the defendants have remained in actual possession, the plaintiff must still date his cause of action from the date of sale. JOWHER ALI v. RAMCHAND

[2 B. L. R., Ap., 29: 24 W. R., 410 note

Contra, BINDUBASHINI DASI v. RENNY (RAINEY)

[7 B. L. R., Ap., 20: 15 W. R., 30

LIMITATION ACT, 1877—*continued.*

7. ———— *Possession, Suit for—Auction-purchaser, Suit by, for possession.*—Where it was shown in a suit by an auction-purchaser at an execution sale that the formal possession obtained by him through the Court had not been followed by any act of possession, and consequently that it had been infructuous,—*Held* that the purchaser was entitled to bring a suit to obtain actual possession, but was bound to bring it within twelve years from the date of the sale the period prescribed by art. 138, sch. II of the Limitation Act (XV of 1877). The decisions in *Kristo Gobind Kur v. Gunga Pershad Surmah, 25 W. R. 372*, and *Lolit Coomar Bose v. Ishan Chunder Chuckerbutty, 10 C. L. R., 258*, require such purchaser to obtain possession through the Court before bringing his suit, but they do not preclude him from enforcing his right by suit when the formal possession given by the Court has failed to put him in actual possession. KRISHNA LALL DUTT *v.* RADHA KRISHNA SURKHEL

[I. L. R., 10 Calc., 402

8. ———— *Suit for possession by purchaser at sale in execution of decree.*—A purchaser at a sale in execution, not having applied to the Court for possession under s. 318 of the Code of Civil Procedure, brought a regular suit to obtain possession of the property purchased. *Held* that, although a remedy might be open to the plaintiff under s. 318, still he was not precluded from bringing a regular suit, the remedies being concurrent. The words "the date of ...
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9. ———— *Suit for purchaser at sale in execution of decree—Delivery of possession by Court.*—In 1867, *R* and *G* mortgaged certain lands to *G R* by a registered deed of that date. In 1870 *G R* obtained a money-decree against *R* and *G*, and in execution put up the mortgaged land for sale. The plaintiff purchased it without notice of the ...

plaintiff and obtained possession ... In 1883 the ...

[I. L. R., 12 Bom., 310

10. ———— and art. 136—*Suit for possession by assignee of purchaser at sale in execution of decree.*—Limitation Act, 1877, sch. II, art. 138, and not art. 136, is applicable to a suit brought by the assignee of a purchaser of land at a Court-sale to obtain possession of the land. ARUMUGA *v.* CHOCKALINGAM . I. L. R., 15 Mad., 331

11. ———— *Purchase at Court auction and sale in execution of decree—Suit for possession of land—Cause of action.*—In a suit for ... 1891, ... pur- ... d in ... and ... the ... hich ... rove that the judgment-debtor was out of possession at or subsequently to the date of the sale. *Held* that the suit was governed by the Limitation Act, sch. II, ...

VENKATALINGAM *v.* VEERASAMI

[I. L. R., 17 Mad., 89

12. ———— *Suit for possession by* ...

[I. L. R., 18 Mad., 144

13. ———— *Article applicable to suits by assignees of auction-purchaser—Assignee of auction-purchaser.*—Art. 138 of the Limitation Act (XV of 1877) is not limited to suits by the ...

14. ———— and arts. 91 and 95—*Suit for possession of immoveable property—Suit* ...

mortgage. *Held* that the law of limitation governing the suit was not art. 91 or 95 of the Limitation Act, but art. 138. *Hazari Lall v. Jadaun Singh*

LIMITATION ACT, 1877—*continued.*

of a decree against him and was purchased by the plaintiff. In 1877 *B* and his two brothers sold plot 1 to defendants Nos 3—6, who at once paid off the mortgage of 870 and took possession On the 11th February 1877, the three brothers paid off the mortgage of 1874 of plot 2, and in the same month mortgaged that plot to the defendants with possession On the 26th August 1890, the plaintiff sued for possession of *B*'s share by partition and redemption if necessary. *Held* that the suit was barred by art. 137 of the Limitation Act (XV of 1877). *B* became entitled to possession of his share of plot 1 in 1877, when the mortgage of 1870 was paid off by the

Bom., 425; Faki Abas v. Faki Nurudin, I. L. R., 16 Bom., 191, and *Naro v. Ragho, P. J. 1892, p 412,* referred to. GANESH MAHADEO BHANDARKAR *v.* RAMCHANDRA SAMBHAJI MHASKAR

[I. L. R., 20 Bom., 557

———art. 138 (1871, art. 138).

See RIGHT OF SUIT— FRESH SUITS. [I. L. R., 9 Calc., 602

1. ——— *Suit for possession by purchaser at sale for arrears of revenue—Cause of action.—Under the general Law of Limitation,* the cause of action in a suit for possession by an auction-purchaser at a sale for arrears of revenue arises from the date of purchase. HURREE MOHUN THAKOOR *v.* ANDREWS . . . . W. R., 1864, 30

2. ——— *Sale in execution of decree*

bill-of-sale, but too late counting from the time of the actual auction-sale.—*Held* that the plaintiff was barred MOHESH CHUNDER CHATTERJEE *v.* ISSUR CHUNDER CHATTERJEE 1 Ind. Jur., N. S., 266

3. ——— *Purchase by mortgagee of*

gagee was superseded by his possession as purchaser, and that the Statute of Limitation commenced to run from the beginning of his possession as such purchaser BYKUNT DHUR SINGH *v.* LALLA BHUGOBUT SAHOY . . Marsh., 391: 2 Hay, 475

4. ——— *Suit by purchaser at sale for arrears of rent of patni tenure— Cause of action —Adverse possession.*—*A* let an under-tenure to *B*, which under-tenure was sold for arrears of rent under s. 105, Act X of 1859, and bought in by *A*. On proceeding to take possession, *A* found that *C*

LIMITATION ACT, 1877—*continued.*

had trespassed upon the under-tenure during *B*'s tenure, and had held possession for more than twelve years. *A* sued to recover possession of the under-tenure, and it was held by the senior Judge of the Division Bench (BAYLEY, *J.*) that *A*'s cause of action was the act of dispossession by *C*, and that the suit was barred, more than twelve years having elapsed; and that *A*'s right to sue was not affected by the fact that *B*'s tenure was still running. The junior Judge (PHEAR, *J.*) held that the suit was not barred; that the cause of action [illegible] accrued when he obtained back the property [illegible] sale; and that during the period of [illegible] of action did not arise to *B* [illegible] ing the time the patn[illegible] appearing in the sup[illegible] *Held* by the Appell[illegible] view of PHEAR, *J.*, [illegible] who was a purchas[illegible] brances against *C*, [illegible] croached on *B*, the [illegible] at the same time [illegible] tenants of the de[illegible] purchase of the [illegible] that *A* was bot[illegible] prevent him fr[illegible] other purchaser [illegible] CHUNDER GOOPTO *v.* [illegible] W. R., 15

See RAJNARAIN ROY *v.* WOOMESH CHUNDER GOOPTO . . . . . 8 W. R., 444

5. ——— *Survey proceedings—Suit for possession.*—Where the plaintiffs alleged that the

defendants were still in possession [illegible] belonging to them and other neighbouring proprietors; but that it was necessary for them to show that they themselves were in possession of the disputed lands at the time when they granted the patni to the defendants, and that they made over that possession to those defendants at that time. GOPAL KISHEN SIRCAR *v.* RAM NARAIN KOONDOO [17 W. R., 175

6. ——— *Suit for possession —Cause of action.*—Where formal possession was given by the Court, but the defendants have remained in actual possession, the plaintiff must still date his cause of action from the date of sale. JOWHUR ALI *v.* RAMCHAND

[2 B. L. R., Ap., 29: 24 W. R., 419 note

Contra, BINDUBASHINI DASI *v.* BENNY (BAINEY) [7 B. L. R., Ap., 30: 15 W. R., 30

LIMITATION ACT, 1877—*continued.*

7. ——— *Possession, Suit for—Auction-purchaser, Suit by, for possession.*—Where

infructuous.—*Held* that the purchaser was entitled to bring a suit to obtain actual possession, but was bound to bring it within twelve years from the date of the sale the period prescribed by art. 138, sch. II of the Limitation Act (XV of 1877) The decisions in *Kristo Gobind Kur* v. *Gunga Pershad Surmah, 25 W. R., 372*, and *Lolit Coomar Bose* v. *Ishan Chunder Chuckerbutty, 10 C. L. R., 259*, require such purchaser to obtain possession through the Court before bringing his suit, but they do not preclude him from enforcing his right by suit when the formal possession given by the Court has failed to put him in actual possession KRISHNA LALL DUTT v. RADHA KRISHNA SURKHEL

[I. L. R., 10 Calc., 402

8. ——— *Suit for possession by purchaser at sale in execution of decree*.—A purchaser at

remedy might be open to the plaintiff under s. 318, still he was not precluded from bringing a regular suit, the remedies being concurrent. The words "the date of
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9. ——— *Suit for purchaser at sale in execution of decree—Delivery of possession by Court.*—In 1867, *R* and *G* mortgaged certain lands to *G R* by a registered deed of that date In 1870 *G R* obtained a money-decree against *R* and *G*, and in execution put up the mortgaged land for sale. The plaintiff purchased it without notice of the

obtained possession through the Court within the twelve years preceding the suit AGARCHAND GUMANCHAND v. RAKHMA HANMANT

[I. L. R., 12 Bom., 678

10. ——— and art. 136—*Suit for possession by assignee of purchaser at sale in execution of decree.*—Limitation Act, 1877, sch II, art. 138, and not art 136, is applicable to a suit brought by the assignee of a purchaser of land at a Court-sale to obtain possession of the land. ARUMUGA v. CHOCKALINGAM . I. L. R., 15 Mad., 331

11. ——— *Purchase at Court auction and sale in execution of decree—Suit for possession of land—Cause of action*.—In a suit for possession of land instituted on the 1st April 1891, it appeared that the land in question had been purchased by the plaintiff in a Court auction held in execution of a decree on the 20th June 1878, and that the sale to the plaintiff was confirmed on the 31st March 1879, which was the date upon which the certificate issued. The plaintiff failed to prove that the judgment-debtor was out of possession at or subsequently to the date of the sale *Held* that the suit was governed by the Limitation Act, sch. II, art. 138, that "the date of the sale" in that article

VENKATALINGAM v. VEERASAMI

[I. L. R., 17 Mad., 89

12. ——— *Suit for possession by*

distinguished PULLAYYA v. RAMAYYA

[I. L. R., 18 Mad., 144

13. ——— *Article applicable to suits by assignees of auction-purchaser—Assignee of auction-purchaser.*—Art. 138 of the Limitation Act (XV of 1877) is not limited to suits by the

14. ——— and arts 91 and 95—*Suit for possession of immoveable property—Suit for cancellation of instrument.*—The purchasers of property sold in execution of a decree, having been resisted in obtaining possession of the property by a person claim
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mortgage,
fraudulent.
cancellation or setting aside of the instrument of mortgage *Held* that the law of limitation governing the suit was not art. 91 or 95 of the Limitation Act, but art. 138. *Hazari Lall* v. *Jadaun Singh*

LIMITATION ACT, 1877—*continued.*

I. L. R., 5 All., 76, Ramausar Pandey v. Raghuber Jati, I. L. R., 5 All., 490, Sobha Pandey v. Sahodhra, I. L. R., 5 All., 322; and *Raj Bahadur Singh v. Achambit Lal, L. R., 6 I. A., 110,* referred to. UMA SHANKAR *v.* KALKA PRASAD

[I. L. R., 6 All., 75

——— art 139 (1871, art. 140).

1. ——— *Adverse possession.—Plea*

pleaded that he held on a permanent lease subject to a fixed quit-rent, that he and his ancestors had held on that tenure since and previously to the Permanent Settlement, and that the quit-rent had been received from him by the plaintiff. *Held* that, as the defendant stated that the plaintiff had received kattubandi from him since 1857, the plaintiff's claim to eject could not be disposed of absolutely on the ground that it was barred by the Act of Limitations. VAIRICHARLA SURYA NARAYANA *v.* NADIMINTI BHAGAVAT PATANJALI SHASTRI . 3 Mad., 120

2. ——— *Landlord and tenant—Receipt of rent.—A,* a Hindu, died, leaving his widow, *B,* and mother, *C. B* adopted *D. C* granted a patni pottah to *E* of certain property belonging to the estate of *A.* During the minority of *D, B* received the rent from *E,* and afterwards *D,* on attaining majority, realized rent from *E* by suits under Act X of 1859. Twelve years after attaining majority, *D* sued for cancellation of the patni lease, and for obtaining khas possession of the property. *Held* that the suit was not barred. BUNWAREE LAL ROY *v.* MAHIMA CHANDRA KNUALL

[4 B. L. R., Ap., 86 : 13 W. R., 267

See SHUMBOONATH SHAHA *v.* BUNWAREE LALL ROY . . . . . 11 W. R., 102

3. ——— *Adverse possession—Cultivated and uncultivated lands—Ghatwals.*—The owners of a patni of Bishenpore sued to set aside a survey award and alter a map (1855) which demarcated certain lands as cultivated and uncultivated belonging to Government, and in the possession of ghatwals. Certain ghatwali lands, part of the zamindari of Bishenpore, had been given up to the

as to the uncultivated lands, they had never been in actual possession or in the receipt of any rents since they purchased, but they alleged that, from that time, the ghatwals fraudulently or dishonestly refused to pay them rents in respect of the cultivated lands, as they had done to their predecessors; and that the ghatwals had encroached upon the uncultivated lands. The ghatwals, on the other hand, stated that they never had paid rent to the patnidar, and that the lands were all included within those for which they paid a quit-rent to Government. *Held* (LOCH,

LIMITATION ACT, 1877—*continued.*

The issues are (1) whether the ghatwals paid rent for the cultivated lands to the patnidar; (2) whether the cultivated or uncultivated lands form part of the patni estate; (3) whether the ghatwals were in possession of the uncultivated lands from 1839, or for a period exceeding twelve years before the commencement of the suit, (4) whether they paid rent for the same to the patnidar. WATSON *v.* GOVERNMENT

[B. L. R., Sup. Vol., 182 : 3 W. R., 73

4. ——— *Suit for land—Cause of*

5. ——— *Landlord and tenant—Adverse title set up by tenant.*—Where a landlord sued, after the lapse of more than twelve years from

LLOYD . . . . 6 B. L. R., Ap., 130

NUJMOODDEEN HOSSEIN *v.* LLOYD

[15 W. R., 232

6. ——— *Landlord and tenant—Suit for possession.*—About twenty-five years before suit *R,* being possessed of a house, allowed *K* to occupy it without rent, on condition that *K* would keep it in repair, and restore it to *R* on demand. Nine years afterwards, and without any demand having been made by *R, K* died, and his heirs continued to occupy the house on the same terms as *K* had done. In a suit brought by *R* against the heirs of *K* to recover possession of the house,—*Held* that the suit was barred, being governed by the twelve years' period of limitation RADHABHAI *v.* SHAMA . . . . 4 Bom., A. C., 155

7. ——— *Tenant on sufferance*—Although the English rule of law as to the nature of the possession of a tenant for a term of years, who holds over, has been adopted in British India, the rule of limitation prescribed by 3 & 4 Will. IV, c. 27, by which time begins to run against the landlord from the date of his right of entry, has not been adopted in the Indian Limitation Act, 1877. If a tenant for years holds over in British India, time does not begin to run against the landlord until the tenancy on sufferance has been determined. ADIMULAM *v.* PIR RAVUTHAN I. L. R., 8 Mad., 424

8. ——— *Landlord and tenant—Lease—Tenant overholding on expiration of lease—Nature of holding—Tenant by sufferance—Adverse possession*—*Semble*—Under art 139, sch II of the Limitation Act, time begins to run against a landlord

LIMITATION ACT, 1877—*continued.*

when the period of a fixed lease expires, when there is no evidence from which a fresh tenancy can be inferred, and not at some indeterminate date after that period. Where a tenant holds over after the expiration of his lease without further agreement, such holding over, though by English law styled a tenancy by sufferance, is wrongful. Slight evidence, however will suffice to change his position into that of a tenant-at-will. KANTHEPPA RADDI v. SHESHAPPA [I. L. R., 22 Bom., 893

9. ——— and art. 144—*Landlord and tenant—Rent-note—Expiration of the term—Tenant holding over—Tenancy at sufferance—Want of privity between landlord and tenant—Suit to recover possession.*—A tenant holding over after the expiration of the term mentioned in his rent-note is a tenant by sufferance and there is no such relationship between the landlord and such tenant as is contemplated by art. 139, sch. II of the Limitation Act. A tenant by sufferance is only in by the laches of the owner, so that there is no privity between them. CANDY, J.—The possession of a tenant holding over

——— art. 140 (1871, art. 141).

1. ——— *Cause of action—Suit by reversioner against his ancestor's lessee.*—A reversioner's cause of action against his ancestor's lessee does not accrue until the expiration of the lease, unless the reversioner is evicted or deprived of his rent, or rent is received adversely to him by a stranger from the lessee. HURONATH ROY v. INDOO BHOOSUN DEB ROY . . 8 W. R., 135

2. ——— *Claim to share in immoveable property under will.*—The right to property

brought within twelve years from the date of the testator's death under art. 140 of Act XV of 1877, sch. II. MYLAPORE IYASAWAMY VYAPOORY MOODLIAR v. YEO KAY . I. L. R., 14 Calc., 801 [L. R., 14 I. A., 168

3. ——— and arts. 141 and 118— ... *setting aside* ... Mitakshara ... 867, having ... R, who was admittedly the next reversioner. In July 1867 B

LIMITATION ACT, 1877—*continued.*

the money was specifically advanced for, as well as applied towards, the payment of decrees obtained

defendant as being the purchaser of the mortgagor's interest in one of the mouzahs included in his mortgage. On the 25th June 1882, *M* obtained a decree, declaring that he was entitled to recover the amount due by sale of the mortgaged mouzahs. In the proceedings taken in execution of that decree *M* was opposed by *L*, who was afterwards held to be a benamidar for *S*, who claimed that he had, on the 8th November 1880, purchased five out of the seven mouzahs, at a sale in execution

of the mortgaged mouzahs. The lower Court gave *M* a decree declaring him to be entitled to recover the full amount of the mortgage-money from the five

estate fell into possession, and therefore that *S* was not barred by limitation from disputing *D's* title. LALA PARBHU LAL v. MYLNE [I. L. R., 14 Calc., 401

4. ——— *Limitation Acts (XV of 1877), sch. II, art. 118, and (IX of 1871), sch. II, art. 129—Suit by devisees to recover possession of property devised by will—Prayer to declare alleged adoption invalid.*—A suit by a devisee to recover possession of immoveable property and to have an alleged adoption (on the strength of which the defendant is in possession) set aside, not being one merely to obtain a declaration, is governed by art. 140 of the Limitation Act (XV of 1877). To such a suit art. 118 does not apply, as the prayer for declaration is subservient or auxiliary only to granting of the substantial relief. PANNYAMMA v. MANJAYA HEBBAR . I. L. R., 21 Bom., 159

LIMITATION ACT, 1877—*continued.*

Overruled by SHRINIVAS MURAR v. HAUNMANT CHAVDO DESPANDE . I. L. R., 24 Bom., 260

in which it was held that art. 118 would apply to such a suit.

1. ——— — art. 141—*Suit to set aside alienation by widow—Cause of action.*—A suit to set aside alienations of ancestral property made by a childless Hindu widow during her life-tenancy may be brought at any time within twelve years from the death of the widow TILUCK ROY v. PHOOLMAN ROY [7 W. R., 450

SUNTOKHEE THAKOOR v. BELASSEE KOONWUR [10 W. R., 276

GOPAL MULLICK v ONOOP CHUNDER ROY [11 W. R., 183

GREEDHAREE SINGH v. INDRO KOOER [17 W. R., 237

CHUNDER KANTH ROY v. PEARY MOHUN ROY [1 Ind. Jur., O. S., 21

S C. PEARY MOHUN ROY v. CHUNDER KANTHA ROY . . . . Marsh., 33: 1 Hay, 69

ANUND MOHUN ROY v. CHUNDER MONEE DABEE [Marsh., 547: 2 Hay, 648

2. ——— *Reversioners—Cause of action.*—*R* purchased a patni mehal and devised ... state, ... the ... ehal. ... of the mehal *Held* that his cause of action did not arise until the death of *S*. RAM DOOLLUB SANDYAL v. RAM NARAN MOITRO . . 7 W. R., 455

3. ——— *Cause of action—Hindu law—Alienation by widow.*—*A*, a Hindu widow, while in possession of the property left by her husband, sold a portion thereof After her death, her daughter *B* succeeded to the property, but took no steps to set aside the alienation made by her mother. ... action arose when *B* succeeded to the property. RAJKISHOR DUTT ROY v. GIRISH CHANDRA ROY CHOWDHRY . . . 4 B. L. R., A. C., 186

4. ——— *Reversioners—Cause of action—Suit to set aside alienation.*—In a suit against a widow for acts of waste and alienations ... arrived at majority. *Held* that, if by the death of the widow a new cause of action accrued to the plaintiffs as reversioners entitled to the property, they might sue again; but they could not succeed in the present suit. PERSHAD SINGH v. CHEDEE LALL [15 W. R., 1

5. ——— *Limitation Act (XIV of 1859), s. 1, cl. 12—Suit by reversioner on expiry of widow's and daughter's estate.*—Plaintiff sued in 1887 to recover property ... ma (1) ... 18 ... on ... dants about 1850 and died before suit; and (3) the plaintiff's mother, who was his daughter by another wife. The plaintiff's mother made no claim on the property and died in 1883. *Held* the suit was not barred by limitation SAMBASIVA v. RAGAVA [I. L. R., 13 Mad., 512

6. ——— *Cause of action—Adverse possession—Suit for property inherited from father.*—The plaintiff sought to recover certain property which she inherited from her father, and which had been taken possession of by the defendant during the lifetime of plaintiff's mother. The lower Court dismissed the suit on the ground that it was barred by the law of limitation, plaintiff having failed to show that her mother was in possession at any time within twelve years before the suit. *Held* on special appeal ... the commencement of the adverse possession in her mother's lifetime. ATCHAMMA v. SUBBA RAYUDU [5 Mad., 428

7. ——— *Estate held jointly by two widows—Cause of action—Reversioners.*—Where the estate of a deceased Hindu held jointly by his two widows survives, on the death of one of them, to the surviving widow alone, no cause of action can accrue to the reversioners until the death of the survivors even in respect of a moiety of the property. GOBIND CHUNDER MOJOOMDAR v. DILMEER KHAN [23 W. R., 125

8. ——— *Reversioner—Cause of action—Adverse possession.*—Where, however, the estate is held by some one adversely to the widow, so as to give her a cause of action to recover it, a suit to recover it brought by her or the reversioners is barred after twelve years of such adverse holding. Where a cause of action with regard to the husband's estate has once accrued to a Hindu widow, who nevertheless fails to assert her rights, no new cause of action arises to the heirs after her death. TARINI CHARAN GANGULI v. WATSON [3 B. L. R., A. C., 437: 12 W. R., 413

RAJKUNWAR v. INDERJIT KUNWAR [5 B. L. R., 585: 13 W. R., 52

9. ——— *Female heir—Adverse possession—Suit by reversioner.*—Adverse possession against a Hindu female heir, which would bar her right of suit if she were alive, will equally bar that

LIMITATION ACT, 1877—*continued.*

of the reversioner Nobin Chunder Chuckerbutty v. Gurupersad Doss
[B. L. R., Sup Vol., 1008

S. C. Nobin Chunder Chuckerbutty v. Issur Chunder Chuckerbutty . 9 W. R., 505

overruling Ameer Ali v. Mohendro Nath Bose. Behary Koomaree v. Mohendro Nath Bose. Suhodara Bibee v. Mohendro Nath Bose
[2 W. R., 271

Jeonath Bhugout v. Roopa Koonwur
[3 W. R., 273 note

and Haradhun Nag v. Issur Chunder Bose
[6 W. R., 223

and followed in Ram Kanai Roy Chowdry v. Trilochan Chuckerbutty 1 B. L. R., S. N., 12

Parbutty Mopleessa v. Rajoo
[W. R., 1864, 88

Ram Dyal Gossain v. Kattyanee Debia
[8 W. R., 256

Brinda Dabee Chowdhrain v. Pearee Lall Chowdhry . . 9 W. R., 460

Rash Beharee Lall v. Burmessur Nauth
[10 W. R., 30

Chunder Nath Sein v. Anundomoyee Dossee
[11 W. R., 289

Gunesh Dutt v. Lall Muttee Kooer
[17 W. R., 11

Mohima Chunder Roy Chowdhuri v. Gouri Nath Roy Chowdhuri . . 2 C. W. N., 162

10. ———— *Reversioners—Cause of action*.—Where a Hindu widow, who takes by inheritance from her husband, is dispossessed, the [illegible]

[illegible]

less widow. ... M died after her mother, leaving a son R K. R K on attaining [illegible]

[illegible]

LIMITATION ACT, 1877—*continued.*

have run against the plaintiffs [illegible]

[illegible]

by limitation. Ambitolal Bose v. Rajoneekant Mitter . . 15 B. L. R., 10: 23 W. R., 214
[L. R., 2 I. A., 113

11. ———— *Reversioner—Hindu widow.* Where after the [illegible]

[illegible]

the Mitakshara law, the possession by the nephews being adverse to the widow, the claim of the reversioner on her death was barred. Gopal Singh v. Kanhya Lall Sahebzada
[2 B. L. R., Ap., 14: 11 W. R., 9

12. ———— *Reversioner—Hindu widow—Cause of action—Adverse possession.*—A Hindu died leaving [illegible]

[illegible]

for recovery of the half share which her sister had sold. The defence set up was that the suit was barred by lapse of time, as the plaintiff's cause of action arose in 1835, or more than twelve years before the institution of the suit. *Held* (following a dictum in the Full Bench ruling in *Nobin Chunder Chuckerbutty v. Guru Persad Doss, B. L. R., Sup. Vol., 1008*) that the words "cause of action" in cl. 12, s. 1, refer, not to the new cause of action which accrues to the reversioner, but to the "cause of action" which accrued to the tenant-for-life; and that the suit, having been brought after a lapse of more than twelve years after the death of the tenant-for-life, was barred. Ganga Charan Roy Chowdry v. Jagarnath Dutt
[3 B. L. R., A. C., 208: 12 W. R., 97

13. ———— *Suit by reversionary heirs—Possession by adopted son.*—A Hindu widow, in 1824, assumed to adopt a son to her husband, and such son, and after him the defendant, his heir, was put in possession of the properties in suit. The [illegible]

[illegible]

14. ———— *Relinquishment by Hindu widow—Cause of action by heirs.*—Where a widow relinquished her right to her husband's property in

LIMITATION ACT, 1877—*continued.*

favour of his then reversionary heirs who were accordingly put into possession, and other persons subsequently claimed the property as the husband's heirs, the cause of action of such other persons was held to have accrued from the time when the then reversionary heirs came into possession of the property. KALEE COOMAR NAG *v.* KASHEE CHUNDER NAG . . . . 6 W. R., 180

15. ———— *Right to possession of property on death of Hindu widow—Reversioner.*—The right of a Hindu to the possession of immoveable property on the death of a Hindu widow, to which art. 142, sch II, Act IX of 1871, refers, must be one *in esse* at the time of the death of the widow. The determination therefore of such right during her lifetime extinguishes also the right of reversioner on her death. SARODA SOONDURY DOSSEE *v.* DOYAMOYEE DOSSEE . . I. L. R., 5 Calc., 938

16. ———— *Will—Gift of estate subject to vested interest of widow—Suit in widow's lifetime for declaration of right and account.*—*V S*, a Hindu, died in 1858, leaving a will of which he appointed *G* and *S* executors. After payment of debts, legacies, etc, the executors were directed to manage the residue of the estate, and not to sell it during the lifetime of *L*, the junior wife of *V S*, to whom a monthly payment for life was to be made by them. After the death of *L*, the executors were directed to divide the property that remained in equal shares between them, and to continue to enjoy the same in equal shares. *L* survived both *G* and *S*, who died in 1875 and 1879 respectively. In a suit brought in 1879 by the divided nephew of *V S* [illegible]

[illegible]

possession of the estate as Hindu widows, but had enjoyed merely their allowance under the will KOLLA SUBRAMANIAM CHETTI *v.* THELLANAYAKULU SUBRAMANIAM CHETTI . I. L. R., 4 Mad., 124

17. ———— *Suit by reversioners after death of Hindu widow.*—In 1846, a widow, under an ikrarnama, made over to her brother-in-law certain properties formerly belonging to the estate of one *L*, her late husband. The widow died in 1878. In March 1879 a suit was brought by the daughters of *L* to recover the properties formerly belonging to their father from the hands of certain vendees. *Held* that the suit by the reversioners was not barred under art. 141 of Act XV of 1877, there having been no [illegible]

[illegible]

possession which bars a widow also bars the reversionary heirs, yet the exception laid down in that case would be applicable, and would save limitation. PURSUT KOER *v.* PALUT ROY

[I. L. R., 8 Calc., 442

18. ———— and art. 140—*Act IX of 1871, sch. II, art. 140—Suit by reversioner for possession.*—Under art. 141 of sch. II, Act XV of 1877, a reversioner who succeeds to immoveable property has twelve years to bring his suit for possession from the time when his estate falls into possession. SRINATH KUR *v.* PROSUNNO KUMAR GHOSE

[I. L. R., 9 Calc., 934: 13 C. L. R., 372

19. ———— *Alienation by Hindu* [illegible]

[illegible]

the reversioners must be calculated from her death. SHEO NARAIN SINGH *v.* KHURGO KOERRY. SHEO NARAIN SINGH *v.* BISHEN PROSAD SINGH

. [10 C. L. R., 337

20. ———— *Suit by daughter entitled to possession of immoveable property on death of Hindu widow.*—The daughter of a separated H[illegible]u, who was entitled to succeed to her father's immoveable property upon his widow's death, instituted, after the widow's death, a suit for possession of such property against certain persons who, upon the Hindu's [illegible] held it adversely to [illegible] art. 141 [illegible] was ap- [illegible] of the [illegible] *Kumar* [illegible] KALI *v.* KEDAR NATH . . I. L. R., 14 All., 156

21. ———— *Limitation Act (IX of 1871), art. 142—Dismissal of Hindu daughter's claim as heiress of a share, as barred by time, Effect of, in regard to right of reversioner after her—Res judicata—Adverse possession.*—In a suit in which the parties were descendants of a common ancestor, who had daughters only, one of the latter having been the mother of the first defendant, who was in possession of the ancestral estate, the plaintiff, son of the last surviving daughter, claimed, on her death, possession of his share by inheritance, and also [illegible]

[illegible]

final judgment on the ground of her claim having been barred by limitation. *Held* that the estate, which would have devolved on the plaintiff's mother as survivor of her sisters, was similar to the inheritance of a widow, the same result following the dismissal of the daughter's suit that ensued in regard to the decree adverse to the widow in *Katama Natchiar v. Raja of Shivagunga, 9 Moore's I. A., 539*, where a decree, duly obtained against the widow,

LIMITATION ACT, 1877—*continued.*

bound the reversioner. The previous decree dismis-

MOTHURMOHUN GOSWAMI . I. L. R., 21 Calc., 8
[L. R., 20 I. A., 183

See TRIBHUWAN SUNDAR KUAR *v.* SRI NARAIN SINGH I. L. R., 20 All., 341

and PREMMOYI CHOWDRANI *v.* PREONATH DHUR
[I. L. R., 23 Calc., 636

22. ——— *Possession of Hindu widow—Suit by reversionary heir.*—A Hindu pro-

23. ——— *Reversioner—Adverse*

LIMITATION ACT, 1877—*continued.*

24. ——— *Adverse possession—Alienation by Hindu widow.*—A title by adverse possession for more than twelve years accrues even during the lifetime of a Hindu widow, but if possession arises directly from any invalid alienation on her part, special provision is made for the right to sue on the parts of the reversioners within twelve years from her death and the accrual of their title. GYA PERSAD *alias* LAL PERSAD *v.* HEET NARAIN
[I. L. R., 9 Calc., 93

25. ——— *Reversioner, Suit by—*

since *Held* that, under art. 141 of sch. II of Act XV of 1877, the reversioner was entitled to a fresh period of limitation from the death of the widow, although limitation had begun to run against her. *Semble*—The law as laid down by the Full Bench in *Nobin Chunder Chuckerbutty* v. *Issur Chunder Chuckerbutty, 9 W. R., 505,* has been intentionally modified by the Legislature by art 141 of sch II of the Limitation Act of 1877. DWARKA NATH GUPTA *v.* KOMOLMONI DASI . 12 C. L. R., 548

26. ——— and art. 140—*Adverse possession—Hindu mother—Reversioner.*—*Semble,*

27. ——— *Suit by person claiming*

share was barred. *Per* WILSON, J.—Art. 141 of sch. II of Act XV of 1877 refers to suits by persons claiming on the death of a Hindu or Mahomedan

28. ——— *Suit by Mahomedans for possession of immoveable property by right of in-*

LIMITATION ACT, 1877—*continued.*

the defendants pleaded that the same was barred by limitation, inasmuch as their mother died on the 22nd January 1873, and the suit was not instituted till the 29th of January 1885. The Court below, finding that the mother died on the 22nd January 1873, held that art 141, sch. II, Limitation Act, barred the claim, and dismissed the suit. *Held* that art 141 of the Limitation Act does not apply to a suit by an heir-at-law for possession of immoveable property in that character, but to a suit by a Hindu or Mahomedan who, prior to the death of a female, occupied the position of a remainderman, or reversioner or a devisee, and on the death of the female sues on the basis of that character. HASHMAT BEGAM *v.* MAZHAR HUSAIN

[I. L. R., 10 All., 343

29. ——————— *Suit to obtain a declaration that an alleged adoption is invalid or never took place—Suit for possession of immoveable property*—Art. 118 of the Limitation Act applies only to suits where the relief claimed is purely for a declaration that an alleged adoption is invalid or never in fact took place. Such a suit is distinct from a suit for possession of property, and the latter kind of suit cannot be held to be barred as a suit brought under art. 118, merely by reason of its raising a question of the validity of an adoption, but is separately provided for by art. 141 It is discretionary in a Court to grant relief by a declaration of a right, and consequently the fact that a person has not sued for a declaration should not be a bar to a suit for possession of property on any ground of limitation prescribed for the former. In a suit by a person who had objected to an attachment of immoveable property in execution of a decree, and whose objection had been disallowed, to set aside the order disallowing the objection, for removal of the attachment, and for possession of the property, the defendants, at whose instance the attachment had been made, set up a title based on the adoption of the judgment-debtor by the widow of the person whom the plaintiff claimed to succeed by right of inheritance. *Held* that the limitation applicable to the suit was art. 141 and not art. 118, of the Limitation Act (XV of 1877), the suit being not to obtain any declaration that the alleged adoption was invalid, but for recovery of possession of immoveable property, for which there was a special limitation. BASDEO *v.* GOPAL . I. L. R., 8 All., 644

30. ——————— and arts. 118, 119—*Limitation Act (IX of 1871), sch. II, art 129—Limitation Act (XIV of 1859), s. 1, cls. 6 and 12—Specific Relief Act (I of 1877), s. 42—Adoption by widow—Suit by reversioner for a declaration that adoption was invalid and for recovery of possession.*—*S* and *K* were two divided brothers. They were members of a vatandar family. *K* died leaving two sons, *S R* and *T*. *S R* was

[illegible]

LIMITATION ACT, 1877—*continued.*

possession of property with mesne profits, and for an injunction. *Held* that the suit for a declaration that the adoption was invalid was governed by art. 118, sch. II of the Limitation Act (XV of 1877), and being barred under that article, the whole claim was time-barred. *Per* JENKINS, C.J.—A combination of several claims would not in general deprive each claim of its specific character and description. *Per* TYABJI, J.—(1) Art. 181 of sch. II of the Limitation Act (XV of 1877) applies to every suit where the validity of the defendant's adoption is the substantial question in dispute, whether such question is raised by the plaintiff in the first instance or arises in consequence of defendant setting up his own adoption as a bar to the plaintiff's success. (2) Art. 149 applies to the ordinary simple case of a reversioner where the validity of the adoption is not the substantial point in dispute, or where the plaintiff can succeed without impugning the validity of the defendant's adoption. *Fannyamma* v. *Manjaya Hebdar*, *I. L. R.*, *21 Bom.*, *159*, overruled. SHRINIVAS MURAR *v.* HANMANT CHAVDO DESHPANDE . I. L. R., 24 Bom., 260

31. ——————— *Will of owner leaving residue of estate to dharma and also leaving four immoveable properties to dharma after death of his widow, to whom a life estate was given—Hindu law—Widow—Suit by heir of owner after death of widow.*—*K* died childless in 1869, leaving two widows, *C* and *N*, him surviving. By his will he [illegible] immoveable

[illegible]

him as heir. The defendants (*inter alia*) pleaded limitation. *Held* that the bequest to dharma was [illegible] regards the [illegible] death; [illegible] barred [illegible] Act [illegible] under that [illegible] death

[illegible]

whatever to interfere in the management or disposition of the income of the property. CURSANDAS GOVINDJI *v.* VUNDRAVANDAS PURSHOTAM

[I. L. R., 14 Bom., 482

32. ——————— *Adverse possession—Hindu widow—Reversioner*—*N*, a Hindu, died in 1863, leaving two widows *T* and *G*, and a daughter *M*, him surviving. In 1874 the widows divided the property left by *N* between them and one of them *T* in 1876 sold her share to one who again sold it to the plaintiff. *G* died in 1887, *T* having died

LIMITATION ACT, 1877—*continued.*

previously. After the death of the two widows, *M*, the daughter of *N*, was heir to the property, but the plaintiff in this suit alleged a title by adverse possession. *Held* that the plaintiff had no title as against the defendant *M*. Under art. 141 of the Limitation Act (XV of 1877), the possession of *T*'s vendee and of the plaintiff was not adverse to the defendant *M*, who took as *N*'s heir, until the death of *G*, the surviving widow of *N*, in 1887. *Srinath Kur v. Prosunno Kumar Ghose, I. L. R., 9 Calc., 937*, and *Cursandas Govindji v. Bundravanda Purshotam, I. L. R., 14 Bom., 458*, followed. MUKTA *v.* DADA . . . I. L. R., 18 Bom., 216

33. ——— *Partition of land between widow and mother of the last male owner—Creation of life estate—Adverse possession—Widow's right on death of mother—Hindu law.*—The widow and mother of a land-owner, who died without issue, divided his land between them in 1869. The mother sold her share of the land in 1870, and died in 1890. The widow now sued in 1893 to recover the property from the vendee. *Held* that the widow and mother on the partition took life estates in their respective shares; that the cause of action arose on the death of the mother when the possession of the vendee became adverse, that the suit was not barred by limitation, and the plaintiff was entitled to recover. PARVATHI AMMAL *v.* SUNDARA MUDALI . I. L. R., 20 Mad., 459

34. ——— *Suit by reversioner on the death of female heir—Adverse possession.*—A Hindu died in 1880, leaving him surviving (1) a daughter who died in 1886, who was the grandmother

35. ——— *Suit by reversioner for possession—Death of the widow—Accrual of right to sue—Unsuccessful application in execution proceedings against widow—Civil Procedure Code (1882), s. 283.*—Under art. 141, sch. II of the Limitation Act (XV of 1877), a reversioner's right to sue accrues on the death of the widow. The fact

36. ——— *Suit by reversioner after widow's death for share of property—Accrual of cause of action—Adoption, Effect of—Suit to set*

LIMITATION ACT, 1877—*continued.*

allows twelve years within which to bring a suit. An adoption taking place in the meanwhile does not curtail such period or impose upon the reversioner the necessity of filing a suit to have it declared invalid during the lifetime of the widow, under pain of losing the inheritance upon the widow's death. Art. 118 of Act XV of 1877 does not operate as to

37. ——— *Reversioner, Suit by—Benami deeds with intent to defraud creditor—Limitation Acts (XV of 1877), s. 1, and sch. II, art. 91, (IX of 1871) sch. II, art. 142—Female heirs, Successive—Adverse possession.*—*K* executed in 1850 four benami documents with intent to defeat the claim of his employer on account of money embezzled by him, two of the documents were hebas (deeds of gift) in favour of *P*, his elder wife, in respect of a moiety of properties 1, 2, and 3, and two were kobalas (conveyances) in favour of *G*, that wife's brother, in respect of the other moiety of those properties. *K* remained in possession of the properties till his death in 1860. After his death, the elder

of the properties covered by the hebas in favour of *G*'s son, then a minor. *S* died in 1868, and *P* died in 1871. A daughter of *K* by *S* succeeded them,

the deeds executed by *K* were colourable transactions, and that the kobala executed by *P* was not valid and binding,—*Held* (1) art. 91, sch. II of the Limitation Act (XV of 1877), did not apply to the case;

Chaodhri, I. L. R., 13 Calc. 308 : L. R., 13 I. A.,

reversioner has undergone a change under art. 142, sch. II of Act IX of 1871, and art. 141, sch. II of

LIMITATION ACT, 1877—*continued.*

Act XV of 1877 (*Sreenath Kur* v. *Prosunno Kumar Ghose, I. L. R., 9 Calc., 931*, referred to); but s. 2 of the Act of 1877 would make the old law applicable in respect of the claim to the moiety covered by the kobala by *K* to *G*, there being no collusion of the widow as regards that kobala, and more than

was not adverse to the widow in the sense of its being obtained against her will, and there was every reason to think that it was obtained in collusion with her; the reversioner's claim was therefore not barred by limitation. *Nobin Chunder Chuckerbutty* v. *Guru-persad Doss, B. L. R., Sup. Vol., 1008. 9 W. R., 505*, referred to. (4) As regards the moiety covered by the hebas, the widow, when she came into pos-

v. *Manorath Ram, I. L. R., 22 Calc. 445*, distinguish. SHAM LALL MITRA *v.* AMARENDRO NATH BOSE . . . I. L. R, 23 Calc., 460

38. ——— *Limitation applicable to reversioner.*—One *C S* died without issue on the 6th January 1869, leaving two widows, *C* and *N*, who thereupon took a widow's estate in such of his immoveable property as was not validly disposed of by him. By his will, dated the 5th January 1869, he appointed the defendant *V* and two others his executors and trustees. The two latter were dead at the date of this suit. By his will he left two immoveable properties to his wife *C* for life and two to his wife *N*, and the residue of his property he left to his trustees, directing them to apply the same in charity (dharam). The properties left to his widows

and that the property bequeathed for that purpose was undisposed of. He claimed to be entitled to the whole of the testator's immoveable property, including that which had been devised to the widows

[I. L. R., 21 Bom., 646

LIMITATION ACT, 1877—*continued.*

Held by the Privy Council in appeal on the question of limitation that the suit was not barred. The limitation, if applicable to the moveables, would have been under art. 120, and to the immoveables under art. 141, of Act XV of 1877. Art. 144, which makes the period of limitation commence from the date when the possession of the defendant is adverse to the plaintiff, does not apply where the suit is otherwise specially provided for, and therefore had no application here. At the same time s. 28 of the Act, as to the extinction of a right by the effect of

[I. L. R., 23 Bom., 725
3 C. W. N., 621

39. ——— *cover posse by intern (XIV of 1 art. 142.*— property f make a possession circumstances, be adverse to the ... cause of action for possession of the said property will not accrue until the death of the female heir,

perty of *P*, and some time before 1851 *H*, the survivor of them, sold a certain village to one *H P*. *H* died in 1857. The three daughters next succeeded to the estate of *P*, and the last of them died in 1890 without having made any attempt to interfere with the possession of the alienee. In 1894 the two sons of *R* sued for possession of the property which had been sold by *H*. *Held* that the suit was within

her hands, but is held adversely to her by a stranger, the cause of action for a suit for the recovery of the property accrues at the commencement of the ad-

LIMITATION ACT, 1877—*continued.*

40. ———— *Adverse possession—Suit by reversioner to Hindu female heir.*—Where property which should by law be in the possession of a female heir is held adversely to such heir by a trespasser, the possession of the trespasser is adverse also as against the reversioners of such female heir as well as against the female heir, and limitation will begin to run against the reversioners from the date of the commencement of such adverse possession. *Hanuman Prasad* v. *Bhagauti Prasad, I. L. R., 19 All., 357,* approved The Full Bench [illegible]

[illegible] 42

41. ———— *Suit by reversioner for possession of immoveable property on death of Hindu female heir—Adverse possession—Limitation Act, 1877, s 2—Revival of extinguished right—Limitation Act (IX of 1871).*—*A* and *I*, daughters of one *R*, on his death succeeded in equal shares to the properties left by him Subsequently *A* died, leaving behind her a minor son *U*, who after his mother's death held possession of half of the said properties as heir to his mother's father for more than twelve years. The period of twelve years expired before the Limitation Act (IX of 1871) came into operation In a suit for recovery of possession [illegible] which was [illegible] vards passed [illegible] reversioner [illegible] the female [illegible] barred by [illegible]

right of the reversioner was also barred. *Srinath Kur* v *Prosonno Kumar Ghose, I. L R., 9 Calc., 934,* followed. *Tikaram* v *Shama Charan, I L R., 20 All., 42,* dissented from BRAJA LAL SEN v JIBAN KRISHNA ROY . I. L. R., 26 Calc., 285

———— art. 142 (1871, art. 143)

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.

[I L. R., 16 Calc., 473
I. L. R., 19 Calc., 660
I. L. R., 14 Bom., 458
I. L. R., 16 Bom., 343
I L. R, 14 Mad., 96

1. ———— *Sale in execution of decree*—When a suit to establish his title and to recover possession of property is brought by a person who has been dispossessed under a sale in execution of a decree against other persons, and no summary order has been made declaring the property liable to be sold in execution of such decree, the period of limitation applicable is that prescribed by cl 12, s 1, Act XIV of 1859,—*viz.*, twelve years from the date of dispossession JODOONATH CHOWDHRY v RADHOMONEE DASSEE

[B. L. R., Sup. Vol., 643: 7 W. R., 256

GEDROO SIRCAR v. BEHAREE LALL RUDRA

[20 W. R., 165

2. ———— *Dispossession or discontinuance.*—The word "discontinuance" in art. 142, sch II of the Limitation Act, refers to a case where the person in possession goes out and is succeeded in possession by another *Rans* v. *Barlin, L. R, 14 Ch D, 537,* and *Gobind Lall Seal* v *Debendro Nath Mullick, I. L. R, 6 Calc, 311,* followed SOHNUR ALI v HATTMAN . 1 C. W. N., 277

3. ———— *Joint family property, Exclusion from*—Art 142, sch II of the Limitation Act, has no application to a case where the plaintiff has been excluded from a joint family property UMESH CHANDRA BHATTACHARJEE v JAGADIS CHANDRA BHATTACHARJEE . 1 C. W. N., 543

4. ———— *Suit to recover possession—Sale in execution—Civil Procedure Code, ss. 249, 259, 264, and 269.*—In execution of a decree obtained against *A*, his right, title, and interest in certain property were sold, but the certificate of sale erroneously recited that *A* and *B*'s ancestor were defendants in the suit, and that the interest of the defendants in the suit had been sold, and accordingly the purchaser was put in possession under s 264, Act VIII of 1859, of the right, title, and interest of *B*'s ancestor as well as of *A* in the property In a suit brought by *B* for confirmation of title and recovery of possession after the lapse of a year, but within twelve years from the date of dispossession —*Held* that the suit was not barred by lapse of time. PROTAB CHUNDER CHOWDHRY v BROJOLOLL SHAHA

[B. L. R, Sup. Vol., 638: 7 W. R., 253

[illegible]

decree) to bring his suit for restoration to his property any time within twelve years from the date of his dispossession. BHEEM GOYALLEE v KHOOBUN SAHOO . . . . 17 W. R., 429

6. ———— *Suit to recover possession* [illegible]

years from the date of the dispossession, under cl 12, s 1 LALCHAND AMBAIDAS v. LAKHARAM

[5 Bom., A. C., 130

LIMITATION ACT, 1877—*continued.*

overruling KRISHNAJI v. JOSHI MAKUND CHIMANSHET . . 2 Bom., A. C., 18

7. ———— *Suit for lands in excess taken in execution of decree*.—A suit to recover

8. ———— *Decree for wrongful possession—Cause of action*.—In a suit for recovery of possession of a share in a certain talukh, on the allegation that the plaintiff had been dispossessed under an award passed under s. 15, Act XIV of 1859, the defence set up was that the plaintiff was not in possession of the property within twelve years of suit. *Held* that the wrongful possession which the plaintiff held during the few months before the award under Act XIV was no possession which could take his case out of the Act of Limitation. The dispossession under the award did not give him a fresh cause of action. GOLAM NABI v. BISWANATH KAR . . . 3 B. L. R., Ap., 85 [12 W. R., 9

PREMCHAND KYBUTTA v. HUREE DOSS KYBUTTA [22 W. R., 259

TARA BANU v. ABDUL GUFFER CHOWDHRY [12 C. L. R., 486

9. ———— *Suit to establish title invaded by award under s. 15, Act XIV of 1859.*—A suit to establish the plaintiff's title to property invaded by an award under s. 15, Act XIV of 1859, was governed by the limitation of twelve years, and the cause of action arose from the date of the award. ESHAN CHUNDER BANERJEE v. ZAMUDUROONISSA KHATOON . . . 17 W. R., 468

10. ———— *Suit for possession—Illegal resumption by Government.*—The plaintiff was possessed of an estate situate on the bank of a river, and c[illegible]

The

1818

answ

chur land [illegible] a suit was filed by Government under Regulation II of 1819 for the resumption of these lands [illegible]

tinuir [illegible]

1847 [illegible]

under [illegible]

for th [illegible]

struck off the suit and restored the lands to the possession of the zamindar. The proprietor claimed the wasilat enjoyed by the Government during his dispossession, and the Government again dispossessed him, under the assumption that the lands were an island in the river, and that the plaintiff was not [illegible]

during such period the limitation did not run; and, further, after that period the necessity for a suit was obviated by the restoration of the lands to the proprietor. *Held* also that a fresh cause of action accrued under the second ouster. SURNOMOYE v. COLLECTOR OF RUNGPORE . Marsh., 13: W. R., F. B., 4 [1 Hay, 37

11. ———— *Suit to recover possession of land sold for arrears of revenue.*—In a suit to recover possession of certain villages belonging to a talukh which had been sold by Government for arrears of revenue, where the plaintiff alleged that they ought not to have been sold as they were not subject to revenue, the second defendant, who was the purchaser and in actual possession, pleaded limitation as a bar. The plaintiff urged that a fresh cause of action arose in consequence of some proceedings of the Government by which they made a new grant of the villages to the second defendant at an increased revenue. *Held* that such grant would not give a new cause of action, and could not affect the time when the only cause of action arose to the plaintiff. CHAITANYA CHUNDRA HURIS CHANDANA JAGADEVU v. COLLECTOR OF GANJAM [22 W. R., 187 L. R., 1 I. A., 335

12. ———— *Cause of action—Suit for land sold, but taken back under agreement to exchange.*—In a suit to recover possession of lands

tually decreed to another party.—*Held* that plaintiff's cause of action originated on the date of the decree depriving him of the lands last mentioned. KABUL KRISHNA DOSS v. MOHESSUREE DEBIA [16 W. R., 270

13. ———— *Discontinuance of possession—Diluviated lands afterwards re-formed—Adverse possession.*—*Per* GARTH, C.J.—Where a

that he has acquired a title under the law of limitation which has put an end to the rights of the original possessor. *Per* WHITE, J.—The dispossession, or discontinuance of possession, mentioned in art. 143, sch. II of Act IX of 1871, is that which [illegible] possession

years of the time when adverse possession is [illegible] taken of land re-forming on the original site, whether at the time of suit the land is capable of occupation or his lying under water in consequence of a

LIMITATION ACT, 1877—*continued.*

s c nd diluvion. KALLY CHURN SHAHOO *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL

[I. L. R., 6 Calc., 725: 8 C. L. R., 90

14. ——————— and arts. 139, 144—*Discontinuance of possession*.—In a suit to recover possession of a house, the plaintiffs alleged that their predecessor in title had permitted *A*, the father of

[illegible]

title had made a gift of the house to *A*, that he had

[illegible]

The meaning of art 142 is, that where there has been possession followed by a discontinuance of possession, time runs from the moment of its discontinuance, whether there has or has not been any adverse possession, and without regard to the intention with which, or the circumstances under which, possession was discontinued Arts 139 and 142 of Act XV of 1877 considered. GOBIND LALL SEAL *v.* DEBENDRONATH MULLICK

[I. L. R., 5 Calc., 679: 5 C. L. R., 527

In the same case on appeal,—*Held* a suit for the recovery of immoveable property against a person who had originally been in mere permissive occupation or possession accorded on the ground of charity or relationship is governed by Act XV of 1877, sch II, cl. 144, and not by cl. 142 of the same schedule. In such a case the owner of the property, who has accorded the permissive occupation, cannot be said to have "discontinued" the possession. GOBIND LALL SEAL *v.* DEBENDRONATH MULLICK

[I. L. R., 6 Calc., 311: 7 C. L. R., 181

15. ——————— *Proprietors having refused*

[illegible]

LIMITATION ACT, 1877—*continued.*

[illegible]

KHAN *v.* BADAN SINGH . I. L. R., 17 Calc., 137
[L. R., 16 I. A., 148

16. ——————— *Suit for possession*—*Dispossession during unexpired lease by plaintiff's predecessor*.—In a suit brought by the plaintiff in 1880 to recover possession of certain lands from which his predecessor in title had been dispossessed, in which suit the Court of first instance found that the defendant had dispossessed the plaintiff's father in 1860, during the unexpired term of a lease granted by the plaintiff's father to a ticcadar,—*Held* that the

[illegible]

SOHYE ROY *v.* LUCHMESHUR SINGH

[I. L. R., 10 Calc., 577

17. ——————— *Suit for possession of im-*

[illegible]

v. RAGHUBAR JATI I. L. R., 5 All., 490

18. ——————— *Symbolical possession*.—On the 7th November 1868, certain property was purchased by one *G D B* at a sale held in execution of a decree obtained against one *J G* On the 8th January 1873, the purchaser obtained a sale certificate, and, on the 10th August 1873, was put into symbolical possession of the property through the Court On the 3rd March 1875, the plaintiff, in execution of a decree obtained against *G D B*, purchased this property, symbolical possession of the property being given to him by the Court on the 31st March 1875 On the 7th August 1885, the plaintiff brought this suit to recover possession of this property, alleging that he had been dispossessed therefrom, on the 13th July 1885, by the defendant No 2, who had taken an ijara of the property from the son of *J G.* The defence set up was limitation. *Held* that on the principle laid down in *Juggobundhu Mukerjee* v *Ram Chunder Bysack, I L. R., 5 Calc., 584*, the suit was not barred *Krishna Lall Dutt* v. *Radha Krishna Surkhel, I. L. R., 10 Calc., 402*, overruled JOGOBUNDHU MITTER *v.* PURNANUND GOSSAMI I. L. R., 16 Calc., 530

DHAPI *v.* BARHAM DEO PERSHAD

[4 C. W. N., 297

19 ——————— *Dispossession*.—Where the plaintiffs were proprietors of land, but declined to engage for the land revenue, in consequence of

LIMITATION ACT, 1877—*continued.*

which the defendants were admitted so to do, and to obtain possession *Held* that there was a disposses-

20. ——————— *Possession, Suit for—Privy Council, Practice of—Concurrent decisions*

ing the sons born of his other wife. The Courts below decided in favour of the sons of the wife first married. As to one of the properties, they concurred in finding the facts entitling these sons alone, and the committee preferred not to depart from the general rule as to concurrent decisions on fact. As to the other property, both the Courts found that there had been a transfer from the name of the original benamidar into the name of the wife first married; but, whereas the first Court found that this change was intended to give her the beneficial interest, which thenceforth belonged to her, and to her sons after her, the Appellate Court found that the transfer was simply from one benamidar to another, although after the death of the mother the property had been treated as that of her sons. Accordingly, as to this the evidence was considered, and their Lordships inclined to the view taken by the first Court. However, the title not having been clearly proved, they preferred to rest their decision on the possession found. The claimants, and their father before them, having together been out of possession for more than twelve years before action brought, limitation was an absolute bar ASGHAR REZA *v.* MEDHI HOSSEIN . I. L. R., 20 Calc., 560
[L. R., 20 I. A., 38

21. ——————— and art. 44—*Mortgage, Suit for redemption of—Equity of redemption,*

redemption had been sold to the mortgagee by the widows of the mortgagor, the plaintiff being then a minor The defendants contended that this suit

LIMITATION ACT, 1877—*continued.*

the suit was not barred. The necessity of impugning the sale of 1863 to the second defendant arose from the second defendant's resisting the plaintiff's claim to redeem the mortgage. *Held* also that the second defendant, having entered into possession as mortgagee, could not afterwards set up an adverse possession as owner so as to defeat the plaintiff's right to redeem BHAGVANT GOVIND *v.* KONDI VALAD MAHADU . . . I. L. R., 14 Bom., 279

22. ——————— and art 144—*Suit for possession alleging obstruction to possession—Adverse possession.*—The plaintiff sued to recover possession of certain land, together with mesne profits until recovery of possession, alleging that he had obtained possession under his sale, and that his possession was obstructed by the defendants *Held* that the suit fell under art. 142, and not art. 144, of the Limitation Act. FAKI ABDULLA *v.* BABAJI GUNGAJI
[I. L. R., 14 Bom., 458

——————— art. 143 (1871, art. 144).

1. ——————— *Stipulation by tenant to clear land, Suit for breach of.*—Limitation was held to apply in a case where it was stipulated in a lease that
a certain tim
the defendan
TUMEEZOODEEN CHOWDHRY *v.* SURWAR ...
[7 W. R., 209

he jointly with the cousin had ...
lifetime. This share she sold as if she had held an

was alleged, "a breach of condition or forfeiture ... By the terms of
idow
eath
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widow's lifetime. There was no condition against such an alienation, and if there had been, there was neither any rule of law, nor anything in the words used in the solehnama, attaching forfeiture to the breach of such a condition *Held* accordingly that art 144 did not apply, and the suit was not barred by limitation. SAHODRA *v.* RAI JANG BAHADUR. LUTCHMAN SAHAI CHOWDHRY *v.* RAI JANG BAHADUR I. L. R., 8 Calc., 224: L. R., 8 I. A., 210

LIMITATION ACT, 1877—*continued.*

3. ———— *Act IX of 1871, s. 23—Breach of condition in mortgage—Suit for ejectment of mortgagees—Continuing breach of contract.*—In November 1873 *M* sued for the cancelment of a deed of usufructuary mortgage executed by her in November 1856, and for the ejectment of the mortgagees, on the ground of the breach of a condition in the deed

of limitation having been taken, the lower Courts held that the suit was within time, as the case fell within cl. 148, sch II, Act IX of 1871 It was held in special appeal that, assuming that they were in error in so holding, the case was governed by cl. 144, and the provisions of s 23 enabled the plaintiff to treat each failure to pay the stipulated annuity as a new breach giving a new right to eject, and that the suit was therefore clearly within time. SADHA *v.* BHAGWANI . . 7 N. W., 53

4. ———— *Agreement to pay annual fees—Right of possession in default—Suit for possession.*—The purchasers of certain land agreed

BHOJRAJ *v.* GULSHAN ALI I. L. R., 4 All., 493

———— art. 144 (1871, art. 145; 1859, s. 1, cl. 12).

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION
[I. L. R., 19 Calc., 660
I. L. R., 14 Bom., 458
I. L. R., 14 Bom., 98
I. L. R., 18 Bom , 513

See POSSESSION—ADVERSE POSSESSION
[I. L. R., 21 Bom , 509

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859.
[I. L. R., 14 Calc., 109

1. IMMOVEABLE PROPERTY

1. ———— *Immoveable property—Toda giras hak.*—The expression "immoveable property" in Act XIV of 1859, s 1, cl. 12, must not be construed as identical with "lands or houses."

LIMITATION ACT, 1877—*continued.*

1. IMMOVEABLE PROPERTY—*continued.*

It comprehends all that would be real property according to English law, and possibly more. A todi giras hak being a right to receive an annual payment, the liability for which is not a mere personal liability, but one which attaches to the inamdar into whosesoever hands the village may pass, is "an interest in immoveable property" within the meaning of cl 12, s. 1, Act XIV of 1859. FUTTEHSANGJI JASWANTSANGJI *v.* DESAI KULLIANRAIJI HAKOOMUTRAIJI
[13 B. L. R., 254 : 10 Bom., 281
L. R., 1 I. A., 34 : 21 W. R., 178

Overruling decision in FATESANGJI *v.* DESAI KALYANRAIJI . . . 4 Bom., A. C., 189

2. ———— *Immoveable property—Fees paid to hereditary office-holder.*—The clause of the Limitation Act (XIV of 1859) which was

"immoveable property," as used with regard to Hindu law, discussed. BALVANTRAV *alias* TATIAJI BAPAJI *v.* PURSHOTAM SIDHESHVAR . . 9 Bom., 99

3. ———— *Immoveable property—Suit for dues of hereditary office.*—A suit to recover payment of sums claimed by certain persons as

4. ———— *Suit for share of hereditary*

5. ———— *Grant by a Hindu sove-*

LIMITATION ACT, 1877—*continued.*

1. IMMOVEABLE PROPERTY—*continued.*

PERSHAD *v.* SURUBJEET SINGH . 4 N. W., 167

17. ——— *Mortgage of house "exclusive of land"—Interest in immoveable property.*—A bond whereby "the superstructure of a house exclusive of the land beneath" is hypothecated

18. ——— *Immoveable and moveable property.*—In the year 1857 *A* died, leaving a son, the plaintiff *B*, and the defendants *C* and *D*, his widows, him surviving. *C* took possession of all *A*'s property. The plaintiff *B* was the son of *D*, and, shortly after *A*'s death, *D* gave birth to another son, the plaintiff *E*. In 1865 *D* instituted a suit against *C* and *B* and *E*, alleging that *A* had left a will. In this suit *C* claimed to be the heiress of *A*. No

art. 89 or 90 of the same Act. KALLY CHURN SHAW *v.* DUKEE BIBEE

[I. L. R., 5 Calc., 692: 5 C. L. R., 505

19. ——— *Saranjam — Right to*

20. ——— *Emoluments of hereditary office—Interest in immoveable property.*—A suit to

LIMITATION ACT, 1877—*continued.*

1. IMMOVEABLE PROPERTY—*concluded.*

objected that the claim was barred by limitation.

21. ——— *Right of purchaser to have lands registered in his name—Nature of such right—Cause of action in respect of such right—Suit for*

it is asserted or denied, and a suit for a declaratory decree in respect to it must be brought within a period of six years from that date. In the present case the right had not been asserted or denied until the suit was filed, and the suit was therefore not barred. BHIKAJI BAJI *v.* PANDU

[I. L. R., 19 Bom., 43

2. ADVERSE POSSESSION.

22. ——— *Application of article.*—Art. 144 of sch. II of Act XV of 1877, as to adverse possession, only gives the rules of limitation where there is no other article in the schedule specially providing for the case. MAHAMMUD AMANULLA KHAN *v.* BADAN SINGH

[I. L. R., 17 Calc., 137
L. R., 16 I. A., 148

23. ——— *Onus probandi.*—Under art. 144 of the Limitation Act (XV of 1877), it is not for the plaintiff to prove that he has been in possession within twelve years before suit, but it is for the defendant to show that he has held adversely to the plaintiff for twelve years. NYAMTULA *v.* NANA VALAD FARIDSHA

[I. L. R., 13 Bom., 424

24. ——— *Adverse possession*—*A*, *B*, and *C* were brothers. In 1846 and 1847, a partition was effected between *A* (since deceased) and *C* on the one part and *B* on the other, *C* being

share. In 1855 certain proceedings were taken, the object of which was to adjust the shares so as to

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

1847, so far as it respected lands held by *B* in the village of K. *Held* that *B*'s possession was adverse from 1847, and the re-adjustment in 1855 could not give the plaintiff a new starting point; the suit therefore was barred by limitation. SRINIVASSIENGAR *v.* SRINIVASSARANGA CHARIYAR . 4 Mad., 10

25. ———— *Adverse possession.*—The

satisfaction objection was made by a member of the family claiming ten of the villages as held by him and his ancestors under a mokurari grant for maintenance. An answer was put in and litigation followed, resulting in a final decision by the civil authorities of the zillah that the claimant was not

not arise till his title was devised and the proceeds diverted from his use. COURT OF WARDS *v.* BUNWAREE LALL THAKOOR . . 15 W. R., 102

26. ———— *Suit for possession of land—Collector's possession not adverse to true owner.*—Act IX of 1871, sch. II, art 145, enacting that suits for possession of immoveable property, or any interest *therein*, must be brought within twelve years from the time when the possession of the defendant, or some person through whom he claims, has become adverse to the plaintiff, differs from the rule formerly in force under Act XIV of 1859, s 1, cl. 12 The latter was that the suit must be brought within twelve years from the time when the cause of action arose, and thus the former rule that, where the cause of action arose upon an alleged dispossession, the burden was upon the plaintiff to show

Collector's possession does not become adverse to the owner by reason of his making this payment to another claimant KARAN SINGH *v.* BAKAR ALI KHAN . . . . I. L. R., 5 All., 1
[L. R., 9 I. A., 99

27. ———— *Adverse possession—Attachment of vatan lands—Peshwa's Government—*

LIMITATION ACT, 1877—*continued.*

2 ADVERSE POSSESSION—*continued.*

1866, when the British Government made them khalsa, or resumed them. The defendant in the meanwhile entered upon them as tenant to the Government and paid assessment thereon In the year 1871 the lands were ordered to be restored to the plaintiffs. After this order of restoration, the plaintiffs brought a suit against their co-parceners for partition and obtained a decree. In the execution of this decree they were obstructed by the defendant, who claimed the lands as his own. The plaintiffs thereupon brought a suit against the defendant in 1881 to eject the defendant and to obtain possession of the lands The Court of first instance held the plaintiffs entitled merely to such

from the resumption of the lands by Government in 1866, since which time the defendant was to be considered as tenant or occupant under Government.

therefore could not be made adverse by intimation or notice to the plaintiffs It was not found that

management to the term of that management, and nothing further. TUKARAM *v.* SUJANGIR GURU
[I. L. R., 8 Bom., 585

28. ———— and art. 142 and s. 28 *—Decree obtained—Decree restoring possession to trespasser against dispossession by another trespasser, Effect of—Illegal dispossession by the true*

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

owner.—The plaintiffs were in possession without title from 14th June 1870 to 19th September 1873; they were then dispossessed by a third person, but recovered possession by a decree against him in December 1880 and thereafter remained in possession till 14th September 1888, when they were ousted by the principal defendants. Thus, the plaintiffs' possession not aggregating to twelve years, it was contended on their behalf that the decree abovementioned restoring them to possession did away with the effect of dispossession, so as to complete their title by adverse possession. *Held* that the possession of one trespasser could not be added on to that [illegible]

dants' right had been extinguished under s. 28 of the Limitation Act, and therefore their dispossession of plaintiffs was illegal GUROO CHURN DUTT *v.* KRISHNA MONI GUPTA . . 2 C. W. N., 315

29. ——— *Adverse possession.*—*A* became a bairagi and went on a pilgrimage. He alleged that before his departure he made over his property to *B*, on the condition that it should revert to him on his return. *B* sold it to *C* Upon his return after several years, *A* claimed the property from *C*, who refused to give up possession. *D* purchased *A*'s rights, and then sued the widow of *C* to obtain possession. She denied that the property was made over to *B* upon trust for *A* on his return, and contended that the suit was barred under cl. 12 of s. 1 of Act XIV of 1859. The lower Appellate Court held that it was not barred on the ground that *B*'s possession was not adverse On special appeal, the case was remanded that it might be found whether *B* had been in possession in trust for *A*, or adversely to him, for more than twelve years JAGANNATH PAL *v.* BIDYANAND [1 B L R., A C, 114: 10 W. R., 172

30. ——— *Suit for possession—Interrupted adverse possession.*—In a suit to recover possession of immoveable property, the defence was adverse possession for more than twelve years, except for two short periods, during which plaintiffs had been put in possession by a Civil Court first, under a decree of the High Court between the same parties, but that they had been dispossessed upon that decree being reversed on review, and second, under a misconception, by the Principal Sudder Ameen, of another order of the High Court in another suit between the same parties; but that they had again been dispossessed after appeal by defendant to the High Court *Held per* LOCH, J. (GLOVER, J, dissenting), that plaintiff's possession during those two periods was not *bonâ fide*, and that the suit was barred MATI SINGH *v.* LILANAND SINGH . . . 2 B. L. R., A. C., 173

S. C. MOTEE SINGH *v.* LULANAND SINGH [11 W. R., 49

31. ——— *Temporary interruption of possession—Wrongful possession given by Court to a third person—Restoration of possession to defendant—Continuous adverse possession.*—In a suit brought to recover possession of certain land the defendant pleaded limitation. He had held possession of the land adversely to the plaintiff from 1881 up to the date of suit (2nd October 1895), with the exception of a period of three years (*viz.*, 4th April 1892 to 9th April 1895), during which he was dispossessed under a decree of a Civil Court of first instance obtained against him by a third person, which being reversed in appeal he was restored to possession on the said 9th April 1895. *Held* that the present suit was barred by limitation. The wrongful possession given by the Court to a *third* person did not (after possession had been restored to the defendant) prevent the statute from running during its continuance against the plaintiff and in favour of the defendant. DAGDU *v.* KALU [I. L. R., 22 Bom., 733

32. ——— *Adverse possession—Admission of lambardar to partition.*—Where the lambardar had clearly admitted in the wajib-ul-urz that [illegible] reven[illegible] thoug[illegible] right to the profit and loss,—*Held* that the claim of the shareholders to definition of their shares was not lost. MEHTAB SINGH *v.* PURMA . 3 Agra, 241

33. ——— *Adverse possession—Insolvency.*—Suit by the Official Assignee of a deceased insolvent to recover a talukh conveyed (several years before his insolvency) by the insolvent, who was sole or chief acting executor of his father-in-law's will, as a security for his own debt to his father-in-law, not to any other person in trust for the benefit of any parties who might be entitled to the estate, but to the insolvent's wife, who was the tenant for life of the residue. *Held* that, in the absence of any proof of fraud, the widow's continuous and adverse possession for more than twelve years barred the suit. COCHRANE *v.* HURROSOONDERY DEBIA [4 W. R., P. C., 103: 6 Moore's I. A., 494

34. ——— *Adverse possession—Joint entry of names.*—In a suit by a Hindu widow for a declaration of right and title to dhurmutter land of [illegible] been in possession, [illegible] own [illegible] in the [illegible] husband,—*Held* that the entry of plaintiff's name conjointly with defendant's was a declaration of at least joint title such as nullified a plea of bar by limitation by adverse possession. DEEPO DEBIA *v.* GOBINDO DEB . . . 16 W. R., 42

35. ——— *Suit by widow for share on partition of husband's estate—Adverse possession.*—In a partition suit by a widow for the recovery of her husband's share of property, held during his lifetime jointly with his brother, although such suit be brought more than twelve years after her husband's death, her claim is not barred by the statute of

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

limitations, unless the brother has for a period of twelve years before suit held adversely to her. KISTOMONEE CHOWDHRY v. SIBCHUNDER CHOWDHRY [Marsh., 193 : 1 Hay, 473

36. ———— *Adverse possession.*—A Hindu of Tirhoot died in 1849, leaving two widows and a brother. A compromise was made by the three, whereby they agreed that the brother should remain in possession of the property left by the deceased, and that some land should be assigned to the widows for maintenance. The elder widow died in 1867, and the younger sued the heirs of the brother for recovery of possession of the property. The defence set up was that the suit was barred by limitation, as her cause of action arose not on the death of her co-widow, but on the death of her husband. *Held* that, as to recovery of possession of a moiety of the property, the cause of action arose on the death of the co-widow, that the possession of the elder widow was not adverse to the younger widow, as the elder widow was permitted to

S. C. JUDOOBANSEE KOER v. GIRBHIRUN KOER [12 W. R., 158

37. ———— *Hindu widow—Adopted*

share of the joint property. Afterwards in 1849 his brothers dispossessed the widow. In 1851 she adopted a son, who attained his majority in 1865, and in 1866 instituted the present suit for possession of the property. *Held* that the suit was barred by lapse of time. GOBIND CHANDRA SARMA MAZOOMDAR v. ANAND MOHAN SARMA MAZOOMDAR [2 B. L. R., A. C., 313

38. ———— Two sisters, *B* and *P*, not being heirs, took possession of ancestral property as heirs on the death of their mother *H*. After a few years they quarrelled. *P* adopted a son and executed a deed of gift in his favour. *B* claimed the whole property through her deceased husband as heir of *B M*, who again was heir of the maternal uncle, on whose death *H* had succeeded. *Held* that, in the absence of any agreement creating a life estate in favour of the two sisters, the cause of action of the collateral heirs arose from the time that *P* quarrelled with her sister and adopted a son. BUNGSEEDHUR GHOSE v. TARINEE CHURN SINGH 3 W. R., 195

SHAMA SOONDERY DOSSEA v. TARINEE CHURN SINGH 3 W. R., 194

39. ———— *Impartible zamindari—Succession—Adverse possession by one branch of*

that date until her death in 1877, the estate remained in the possession of *K*. It was subsequently recovered by suit from her sons by the defendant (the son of her elder sister), as being the eldest surviving grandson of *G*. The plaintiff, alleging that he was the third son of *N*, who was the second son of *G* by his

pleaded that it was not open to him to sue for the estate until the year 1870, when his father, his elder

40. ———— *Hindu law—Widow*—

first defendant came in as the nearest then surviving sapinda of the last male holder. The plaintiff, who was the son of the elder undivided brother (deceased) of the first defendant, now sued in 1891 to recover the zamindari from him. *Held*, following *Vijayasami v. Periasami, I. L. R., 7 Mad., 242*, that the suit was barred by limitation. KOOLAPPA NAIK v. KOOLAPPA NAIK. I. L. R., 17 Mad., 34

41. ———— *Widow in possession of estate for dower—Suit by heirs for possession—*

v. HAMID JAN. 3 Agra, 279

42. ———— *Suit for possession of jungle lands—Evidence of ownership.*—In a suit for possession of jungle lands, where there is no proof of acts of ownership having been exercised on either side, possession must be presumed to have continued with the person to whom they rightfully belong. A suit therefore held not to be barred even if plaintiffs failed to prove any acts of ownership, unless the defendants made out a case of twelve years' adverse possession. LEELANUND SINGH v. BASHEEROONISSA [16 W. R., 102

See SUKHUD ALI v. KURIMOONISSA [9 W. R., 124

MOOCHEE RAM MAJHEE v. BISSAMBHUR ROY CHOWDHRY. 24 W. R., 410

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

43. ———— *Possession of ijaradar—Effect of dispossession on zamindar.*—The zamindar or owner is bound by the dispossession suffered by his ijaradar. BRINDABUN CHUNDER SIRCAR CHOWDHRY *v.* BHOOPAL CHUNDER BISWAS . 17 W. R., 377

44. ————*Landlord and tenant—Suit*

45. ———— *Confirmation of title—Cause of action.*—The plaintiff sued for confirmation of his title to, and for possession of, a jote in the Nowabad mehal, deriving his title under a pottah from the ijaradar. The defendant's case was that he had bought the lands as a talukh, and been in possession accordingly; but finding that the lands had been surveyed as a part of the Nowabad mehal, he took a pottah from the ijaradar four years previous to the plaintiff's pottah The defendant's pottah was found to be a forgery *Held* that the plaintiff's cause of action arose solely from the title set up by the defendant under the pottah derived from the ijaradar, and not from the date when the defendant purchased the lands as a talukh. SHAHABOODEEN *v.* NADUROOJUMA [12 W. R., 44

46. ———— *Lessee under Government.*—*A* claimed certain immoveable property as lessee under a Government settlement made in 1859. *B* had been in possession for more than twelve years before the institution of the suit. *Held* that the suit was barred under cl. 12 of s. 1. ABU MIA *v.* RAJU MIA 1 B. L. R., A. C., 34 : 10 W. R., 76

47. ———— *Adverse possession—Suit for ejectment by a jenmi—Defendant in possession under Government cowle.*—The plaintiffs sued for p ssession of land which was found to be

48. ———— and arts. 113 and 139—*Agreement to occupy for a term—Permissive occupation—Expiration of term—Suit for possession.*—Plaintiffs sued in September 1893 to recover possession

house belonged to *K* and promised to vacate it at the end of two years from the date of execution. The document being presented for registration on the 18th May 1880, *M* denied its execution, but after inquiry the District Registrar ordered it to be registered. The lower Court dismissed the suit as barred by limitation (either by art. 113 or art. 144 of the Limitation Act XV of 1877). *Held,* reversing the decree and remanding the case, that the suit was not barred. By the agreement the tenancy or permissive occupation was to end on 3rd May 1882. Either under art. 139 or 144 the plaintiff had twelve years from that date within which to sue. SHIVRUDRAPPA KRISHNAPPA *v.* BALAPPA [I. L. R., 23 Bom., 283

49. ———— *Landlord and tenant—Suit for possession—Cause of action.*—The plaintiff stated that in the year 1862 he purchased a talukh in which some of the defendants then held an ijara for a term of years expiring in 1868. The talukh had previously been a khas mehal in the possession of the Government, and was bought by the plaintiff at an auction-sale held by the Collector. The plaintiff also stated that the ijaradar defendants, in collusion with the other defendants, had continued in possession of the lands held in ijara after the term of the ijara had expired, and had refused to give up possession thereof to the plaintiff The Judge of the lower Appellate Court found that the defendants (other ... previously ... there was ... collusion ... e dismissed ... the ground ... , that the ... piration of the ijara, and that the suit, whether governed by art. 139 or 144 of the Limitation Act (XV of 1877), was not barred on the ground of limitation. *Woomesh Chunder Goopto* v. *Raj Narain Roy,* 10 *W. R.*, 15, cited KRISHNA GOBIND DHUR *v.* HARI CHURN DHUR [I. L. R., 9 Calc., 367 : 12 C. L. R., 19

50. ———— *Landlord and tenant—* ... *perpetual* ... not ... of ... be ... ent ... 56 4 C. W. N., 274

51. ———— *Landlord and tenant—Adverse possession—Trespasser.*—A defendant has a right to set up the plea of tenancy and at the same time to rely on the statute of limitations. The plaintiff sued to recover possession of certain land. The defendant pleaded that it was included in a permanent lease granted to him in 1849 by the plaintiff's predecessor in title, and that the suit was barred by the law of limitation. It was found at the hearing that the land was not included in the lease. It appeared that there were disputes between the parties about the land since 1856, each asserting

his own right to it. It was contended for the plaintiff that, inasmuch as the defendant had claimed the land as a tenant, his possession was not adverse under art. 144 of the Limitation Act (XV of 1877). *Held* that, under the circumstances, the defendant's possession was adverse. The defendant was a trespasser, setting up a pretended tenancy which the plaintiff denied throughout. The case therefore was to be regarded as one against a trespasser, and not as one between landlord and tenant. *Dinomoney Dabea* v. *Doorgapersad Mozoomdar, 12 B. L. R., 274,* followed; and *Tekaitne Gowra Kumari* v. *Bengal Coal Company, 12 B. L. R., 282 note,* distinguished. MAIDIN SAIBA *v.* NAGAPA

[I. L. R., 7 Bom., 96

52. ——————— *Anubhavom tenure—Forfeiture by alienation—Landlord and tenant.*—Lands in Malabar were demised on anubhavom tenure. Some of them were alienated by the tenant, but the landlord subsequently accepted rent. More than twelve years after the alienation, the landlord sued to eject the tenant on the ground that the tenure was thereby forfeited. The tenant for the first time in his written statement denied the landlord's title. *Held* that the cause of action alleged in the plaint was barred by limitation. MADAVAN *v.* ATHI NANGIYAR . . . I. L. R., 15 Mad., 123

53. ——————— *Landlord and tenant—Perpetual lease—Surrender of lease.*—The karnavan of a Malabar kovilagom executed a kuikanom lease of certain land, the jenm of the kovilagom in 1846, and in 1861 his successor demised the same land to the same tenants in perpetuity. The present karnavan sued in 1889 to recover possession of the land. *Held* that the perpetual lease, as being of an improvident character, was *ultra vires* and void; that the original lease was not surrendered by reason of the acceptance of the subsequent lease; that the suit was not

54. ——————— *Land in possession of*

must be found upon the evidence as to whether the

from the tenants and if such receipt of rent extended to a period within twelve years before the date of the institution of the suit, the suit should not be held as barred by limitation. *Woomesh Chunder Goopto* v.

distinguished GOSSAIN MOHENDRA GIR *v.* RAJANI KANT DAS . . 1 C. W. N., 246

55. ——————— *Adverse possession—Landlord and tenant.*—The plaintiffs sued for possession of a third share in certain immoveable property, alleging that they were entitled to it under an

property till his own death in 1865, when *B*'s eldest son took up the management, and he and the other heirs of *B* subsequently sold a portion of the property. The suit was principally against the sons and heirs of *B* and the purchaser. The plaint was filed on the 8th September 1873, and alleged (*inter alia*) that *B* managed the property as trustee. The defence substantially was that *B* held it exclusively as owner and not as trustee, and that the suit was barred by limitation. Both the lower Courts dismissed the suit as barred by limitation, holding that *B*'s possession was adverse, and that *R* had no possession or enjoyment within twelve years previously to the institution of the suit. On appeal to the High Court,—*Held* that *B*'s possession, whether it commenced before the death or only on the death of Balaji, was held, after that event, consistently with and in fulfilment of the agreement. *B*, having entered into possession and been left in possession in the first instance in accordance with the contract, could not change the character of the possession by his mere will. He did not intimate to *R* or *S* that he repudiated the contract and intended to go into possession in opposition to any rights which they might assert. As he entered and continued to hold in a character consistent with the subsistence of their rights, they were never called on to eject him, or by any other process to establish rights which were not denied. While there subsisted any contract, express or implied, between the parties in and out of possession to which the possession might be referred as legal and proper, it could not be pronounced adverse. DADOBA *v.* KRISHNA

[I. L. R., 7 Bom., 34

TATIA *v.* SADASHIV . I. L. R., 7 Bom., 40

56. ——————— *Suit for partition between co-owners—Possession of tenants.*—The plaintiff was the Zamorin of Calicut, and he sued in 1887 for a moiety of certain property in Malabar

brought against *B* by *C*, who had bought the property at a sale in execution of a decree made on a mortgage thereof, the date of the mortgage being

superior interest, that *B*'s possession as purchaser could not be considered to have commenced before the date of the conveyance to him by the Sheriff,—namely, the 1st of April 1867; and that therefore the plea of adverse possession was bad, since the suit had been instituted within twelve years of that date. KASUMUNNISSA BIBEE *v.* NILRATNA BOSE

[I. L. R., 8 Calc., 79: 9 C. L. R., 173
10 C. L. R., 113

68. ———— *Adverse possession—Suit for possession of mortgaged property.*—Where there was nothing to show whether the family had been a joint or a divided family, and where the suit was not against a mortgagee, but, before the plaintiff could get at the mortgagee, he had to remove the obstacle presented by the adverse title (based on a twelve years' usufructuary original possession) of the daughter-in-law of the original mortgagor,—*Held* that the limitation applicable to the case was that prescribed by cl 12, s. 1, Act XIV of 1859 NUND KOOMAR LALL *v.* SHUMBOO SINGH . 8 W. R., 34

69. ———— *Mortgagor and mortgagee—Adverse possession of tortious mortgagee—Heir of mortgagee, Right of, to redeem.*—Lands descended to three sisters. On a question whether a mortgage of a portion by one of the sisters, thirty years ago, was in her own right, or on behalf of the family, or how otherwise, it appeared that each sister had dealt with several portions as on her own behalf; that one of them was the family manager for

of the mortgagor's son, her right and interest mortgaged in the *premises were sold*, and the *Sheriff's* vendee sold to the mortgagee The son of the surviving sister (not the mortgagor) sued for redemption

defendants; and more than twelve years having elapsed before suit, the suit was not maintainable. SHEEMULMONEY BEBEE *v.* GOBERDHONE BERMONO

[2 Ind. Jur., N. S., 319

70. ———— *Cause of action—Adverse possession.*—*R* obtained, on 7th January 1862, a decree declaring a deed of sale of an estate in his favour, dated 7th January 1854, to be a genuine, authentic, and valid instrument In the meantime the plaintiff had acquired possession of the estate under a farm from Government, which farm expired in 1872. In a suit for possession based on the deed of sale and the decree of 1862,—*Held* that the period of limitation of the suit began to run from the termination of the farming tenure, when only the vendors or their representatives could have obtained adverse possession. DHUNDI *v.* RAM LALL

[7 N. W., 149

71. ———— *Transfer of rights—Dispossession of ijaradar.*—After adverse possession of immoveable property for more than twelve years, a new period of limitation cannot commence to run by

BISWAS

72. ———— *Adverse possession—Trans-*

attempted to turn *C* out of possession, more than twelve years elapsed. *Held* that *B*'s claim against *C* was barred by limitation; and that he was not bound by the decree obtained by *B* against *A*, not having been made a party to the suit. MOHENDRO NATH MUKERJEA *v.* NAFFUR CHUNDER PAL CHOWDHRY . . . . . 1 C. L. R., 537

73. ———— *Adverse possession—Suit to recover possession of property sold at execution sale.*—The plaintiff and two other members of his family, *M* and *S*, held a zamindari in the following shares viz,—the plaintiff ten annas, *M* two annas,

annas, were allotted to *M* and *S*, who held

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

annas share of the whole estate obtained by the purchasers under the decree of 1860, a right accrued to him to have his share, now twelve annas, declared upon the lands which had fallen within the six annas share He also claimed to have it declared that the parcels alleged to be lakhiraj were not so On the question of limitation it was held that the 145th article of the second schedule of Act IX of 1871 was applicable; and that, even if technically the lands now in question remained in the possession of *S* pending the appeal against the decree of 1860, there was no possession adverse to the plaintiff rendering it necessary for him to assert his right until the dismissal of the appeal in 1863. MANWAR ALI *v.* ANNODAPERSAD RAI

[I. L. R., 5 Calc., 644; 6 C. L. R., 71
L. R., 7 I. A., 1

74. ———— *Suit by trustee to recover temple lands—Possession for twelve years by party claiming to be trustee*—The defendant purchased from one of the co-trustees of a temple the right to manage the affairs of the temple and enjoy certain land which formed the endowment of the temple, and held possession of the land for more than twelve years. *Held* that a suit by the other trustee to recover the land was barred by limitation. KANNAN *v.* NILAKANDAN . . I. L. R., 7 Mad., 337

75. ———— *Cause of action—Suit for*

NARAIN SHAHA *v.* JUTADHAREE HOLDAR

[7 W. R., 89

Upheld on review in DOYAMOYEE DOSSEE *v.* LUCHMEE NARAIN SHAHA . . 7 W. R., 457

76. ———— *Suit for alluvial land for which there has been a decree—Judicial determination of area of land—Cause of action.*—A consent decree of 1873 decided that certain alluvial land belonged to the plaintiff's village Sipah. The area was judicially determined in 1876 on a map of 1874, but actual possession was not obtained from the defendant who owned villages on the opposite side of the river. *Held*, in a suit to recover the land, that the twelve years which would bar the suit ran from 1876, the judicial ascertainment of the land decreed, and the suit, having been brought within twelve years from that time, was not barred. JAGAJIT SINGH *v.* SARABJIT SINGH

[I. L. R., 19 Calc., 159
L. R., 18 I. A., 165

77. ———— *Suit for division of lands according to custom established in former suit.*—

be redistributed by lot among the co-owners, and to have two of the shares delivered to him as one of such co-owners. In 1851 another co-owner had, in a suit to which some only of the present defendants were parties, obtained a decree for the periodical

plaintiff's right to sue, and that the circumstance

v. SUBBA RAU. SANKARA SUBBAIYAN *v.* SUBBA RAU

[2 Mad., 1

78. ———— *Suit for possession by avoidance of sale-deed—Cause of action—Adverse*

MUKAND . . . 7 N. W., 349

79. ———— *Act IX of 1871, art 93—Suit to set aside deed and for possession*—On the death of *A*, his property was taken possession of by *C* under an alleged deed of sale from *A* *Held*

80. ———— *Suit for cancellation of deed of sale.*—Plaintiff sued for cancellation of the

81. ———— and art 91—*Suit for possession of immoveable property—Suit for cancellation of instrument*—The purchasers at a sale in execution of decree of land sued to set aside an instrument of usufructuary mortgage of the land executed by the judgment-debtor before the sale, and for possession of the land, alleging that the mortgage was fraudulent and collusive. *Held* that, as the

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

main and substantial relief sought was the recovery of possession of immoveable property from persons trespassing on it under the title of a fictitious mortgage, and the declaration of the invalidity of the defendants' pretensions was no more than an inci-

Prasad, I. L. R., 6 All., 75 ; and the judgment of STRAIGHT, J., in *Hazara Lal v. Jadaun Singh, I. L. R., 5 All., 76*, followed. *Bhawani Prasad v. Bisheshar Prasad, I. L. R., 3 All., 846* ; *Ashgar Ali v. Mahommad Zainulabdin I. L. R., 5 All., 573*, distinguished. IKRAM SINGH v. INTIZAM ALI

[I. L. R., 6 All., 260

82. ——————— and art. 44—*Omission to sue within due time to set aside instrument*

availing himself of the longer period allowed for the recovery of immoveable property, provided that he can prove that such instrument is null and void so far as his interests are concerned. RAGHUBAR DYAL SAHU *v.* BHIKYA LAL MISSER

[I. L. R., 12 Calc., 69

83. ——————— *Agreement not to execute decree—Wrongful execution in breach of agreement —Deed of conditional sale—Disavowal of trust.*— The plaintiff sued in 1875 to recover possession of immoveable property which the defendant had obtained in 1873, in execution of an *ex-parte* decree, dated the 8th June 1861 That decree was founded on a deed purporting to be a deed of conditional sale, dated the 24th December 1853, executed by the plaintiff in favour of the defendant The plaintiff

[I. L. R., 1 All., 403

84. ——————— *Suit for recovery of endowed property.*—In 1801 the shebait and proprietor of the gudi of a debsheba at K alienated part of the land by deed of gift to *B* for the purpose

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

independent of the debsheba, and the then plaintiff was referred to a regular suit. In 1861 the then shebait of the debsheba brought a suit for recovery of the lands against the then shebait of the sheba.

85. ——————— *Religious endowment— Sale of trust property in execution—Suit by trustee to recover the property.*—In execution of decrees against the plaintiff, as the representative of his deceased father and brother, certain lands were sold to the first defendant. The plaintiff sued to recover them, alleging that the former owner of the lands had assigned them to his (the plaintiff's) brother and himself (the plaintiff) and their descendants by a

... the Hindu law; ... le the ... nt to ... welve ... KRISH-NAJI GOVIND . . . I. L. R., 8 Bom., 169

86. ——————— *Suit by a trustee of a*

devasom. The defendant had been in possession of the land for more than twelve years, falsely asserting the title of kanomdar with the permission of the plaintiff's predecessor in office. *Held* the suit was not barred by limitation. VEDAPURATTI *v.* VALLABHA

[I. L. R., 13 Mad., 402

87. ——————— *Suit by mirasidar to recover land resigned to Government by his ancestor— Cause of action.*—In a suit brought by a mirasidar to recover possession of miras land, which his ancestor had resigned to Government, against a holder to whom Government had subsequently granted it, it was held that the statute of limitations commenced to run against the mirasidar and his heirs from the ... To the mirasi- ... is not requisite. ARJUNA VALAD BHIVA *v.* BHAVAN VALAD NIMBAJI . . . . 4 Bom., A. C., 133

LIMITATION ACT, 1877—*continued.*

2 ADVERSE POSSESSION—*continued*

88. — *Suit by mirasidar to recover tenure relinquished and taken up by another.* —Where a mirasidar left his miras in 1850 without executing a razinamah resigning it, and the miras lay waste until 1855, when the defendant took it up and cultivated it, it was held that the cause of action of the mirasidar arose in 1855, when the miras was taken up by the defendant. LAKSHUMAN RAMJI v. RAMLAL VALAD MAHIPATA . 6 Bom., A. C., 66

89. — *Adverse possession—Mokurari title—Onus probandi* —The plaintiff purchased a mouzah from the proprietor in 1809, and now sued to obtain possession from the defendant, who was proved to have held under a ticca lease down to 1836, and who now claimed to hold under a mokurari lease, which he said was granted by the former proprietor in 1859 The plaintiff failed to prove possession by his vendor within twelve years of suit brought, and therefore the Courts below

See PRAHLAD SEN v. RUN BAHADUR SINGH [2 B. L. R., P. C., 111: 12 Moore's I. A., 289 12 W. R., P. C., 6

90. — *Suit to set aside mokurari grant—Notice of claim —Cause of action.*—In a suit by the guardian of a minor to recover posses-

which they claimed to hold in perpetuity upon the payment of a fixed rent. The High Court, overruling the decision of the first Court upon the statute of limitations, held, and in the opinion of the Privy Council rightly, that the statute does not begin to run in favour of the mokuraridar against the zamindar until the latter has had notice that the former claims under a mokurari grant, and such notice was

Affirming TEKAITNEE GOURA COOMAREE v. BENGAL COAL COMPANY [13 W. R., 129: 5 B. L. R., 667 note 12 B. L. R., 282 note

91. — *Act IX of 1871, art. 135* —*Suit fo*
—Under
who has t
suit for
from the expiration of the year of grace. Art 135, sch II of that Act, does not apply to such a case GHINARAIN DOBEY v RAM MONARUTH RAM DOBEY [7 C. L. R., 580: I. L. R., 6 Calc., 566 note

LIMITATION ACT, 1877—*continued*

2. ADVERSE POSSESSION—*continued.*

92.

default, become, under the words of the deed, entitled to possession, but within twelve years of the date

of the year of grace, and not from the time when the default was first made BURMAMOYE DASSEE v. DINOPUNDHOO GHOSE . I. L. R., 6 Calc., 564 [7 C. L. R., 583

GHINARAM DOBEY v RAM MONARUTH RAM DOBEY [I. L. R., 6 Calc, 566 note: 7 C. L. R., 580

93. — *Act XV of 1877, sch. II, art 135—Possession under mortgage* —Under a

tion in the mortgage, the right of the mortgagee to take possession does not accrue until after the expiration of the year of grace MODUN MOHUN CHOWDHRY v. ASHAD ALLY BEPAREE [I. L. R., 10 Calc., 68: 13 C L. R., 51

See DENONAUTH GANGOOLY v NURSINGH PROSHAD DOS . 14 B. L. R., 87: 22 W. R., 90

94. — *Suit to set aside aliena-*

95. — *Suit for redemption against person not claiming under mortgagee.*—

was barred under art 145 of Act IX of 1871 The

terests in land AMMU v RAMAKRISHNA SASTRI [I. L. R., 2 Mad., 226

96 — *Suit to set aside sale after conversion from mortgage into sale* —Where a mortgage is subsequently converted into a sale, the cause of action in a suit to set it aside arises, not at

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

the date of the mortgage, but from the date of the sale, and if within twelve years from that date, the suit is in time. IBADAT KHAN *v.* DABEE DYAL [1 Agra, 180

97. ———— *Adverse possession.*—Ob-

98. ———— *Adverse possession — Mortgagor and mortgagee—Suit by mortgagee for possession of mortgaged property—Pre-emption—Purchaser for value without notice.*—Under a registered deed of mortgage, dated in May 1869, the mortgagee had a right to immediate possession; but

gage. *Held,* with reference to a plea of adverse possession for more than twelve years set up by the defendant, that the position of a person who purchased property by asserting a right of pre-emption was not analogous to that of an auction-purchaser in execution of a decree, but that such person merely took the place of the original purchaser and entered into the same contract of sale with the vendor that the purchaser was making. There was privity between him and the vendor, and he came in under the vendor, and his holding must be taken to be in acknowledgment of all obligations created by his vendor. *Anundoo Moyee Dossee v. Dhonendro Chunder Mookerjee, 14 Moore's I. A., 101 : 8 B. L. R., 122,* distinguished. DURGA PRASAD *v.* SHAMBHU NATH . . . . I. L. R., 8 All., 86

99. ———— *Limitation Act, 1871, arts. 15 and 82—Suit by minor to set aside alienation of property by guardian.*—A Hindu family being heavily oppressed with debts, ancestral and otherwise, the two elder brothers of the family, for themselves and as guardian of their minor brother, under Act XL of 1858, applied to and obtained from the District Judge an order under s. 18 of the Act

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

100. ———— and art. 11—*Suit for possession—Civil Procedure Code (Act VIII of 1859), s. 246—Limitation Act (XV of 1877), sch. II, art. 11.*—Where, in consequence of an adverse order passed under the provisions of Act VIII of 1859, s. 246, a suit is [since the Limitation Act (XV of 1877) came into force] instituted to establish

CHUNDER BORAL
[I. L. R., 9 Calc., 230 : 11 C. L. R., 363

BISSESSUR BHUGUT *v.* MURLI SAHU
[I. L. R., 9 Calc., 163 : 11 C. L. R., 409

101. ———— and art. 136—*Suit to obtain possession of land from vendor who has been dispossessed and subsequently recovered possession—Possession, Suit for.*—A vendor who was at the ... immoveable property

Art. 136 does not apply to a suit brought against vendor himself when he recovers possession. RAM PROSAD JANNA *v.* LAKHI NARAIN PRADHAN
[I. L. R., 12 Calc., 197

102. ———— and s. 28—*Sale in execution of decree—Suit to recover possession of property sold in execution—Possession of a person* ... —*K* obtained a decree against *G* and ... he 9th ... against ... on the ... o take ... on the ... y from ... 1876. ... 1886.

brought the present suit to recover possession of the property. *Held* that the title of defendant No. 1 to the land in dispute being not proved, art. 144 of the Limitation Act (XV of 1877) was applicable to the plaintiff's claim, and that the suit being brought within twelve years from the date of the purchase set up by defendant No. 1 (which was held

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

by the lower Courts not proved), the claim was not barred. Want of possession for twelve years after the date of purchase would extinguish the purchaser's title. *Ram Prosad Janna* v. *Lakhi Narain Pradhan, I. L. R., 12 Calc., 197,* and *Sheo Prasad* v. *Udai Singh, I. L. R., 2 All., 718,* referred to LAKSHMAN VINAYAK KULKARNI v. BISANSING [I. L. R., 15 Bom., 261

103. ———— *Suit by auction-purchaser to set aside alienation by judgment-debtor.*—An

The cause of action in such a suit runs from the date of transfer, and the suit is barred after the expiration of twelve years, unless the transfer was actually fraudulent NARAIN DASS v. NIDDHA LALL [3 Agra, 19

104. ———— *Purchaser at sale for arrears of revenue—Shikmi talukh.*—*A* purchased a zamindari of which certain mouzahs were claimed and taken possession of by *B* and *C* as mokurari holders of a shikmi talukh created by the former zamindar before the Decennial Settlement. To a suit by *A* for the recovery of the lands, *B* and *C* pleaded limitation, calculating the period from the time of the purchase in 1833. *Held* that limitation must be computed not from the time of the purchase, but from the time when possession was taken from the purchaser. WISE v. BHOOBUN MOYE DEBIA

[3 W. R., P. C., 5 : 10 Moore's I. A., 165

105. ———— *Suit by purchaser to compel zamindar to register transfer.*—Where a

accrued by his purchase. RADHIKA PERSHAD SHADHOO v. GOOROO PROSUNNO ROY 20 W. R., 125

veyance or assignment, and, their cause of action

arising in 1842, they were barred by limitation ENAYET HOSSEIN v. GRIDHARI LALL

[2 B. L. R., P. C., 75 : 11 W. R., P. C., 29 12 Moore's I. A., 366

obtained upon a mortgage-bond executed by the

MUNBASI KOER v. NOWRUTTON KOER

[8 C. L. R., 428

108. ———— *Settlement by revenue authorities.*—Where the defendants, who were at the settlement in 1841, when the estate was farmed out, recorded as proprietors by the revenue authorities, did not hold proprietary and adverse possession till the expiry of the farming lease,—*Held* that the plaintiff's suit was not barred by limitation as not having been brought within twelve years after 1841. RAMAISHER SINGH v. SAIVA ZALIM SINGH

[2 Agra, 8

109 ———— *Settlement by revenue authorities—Co-sharer.*—In a case in which, after

[… C. L. R., 453

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

111. ——————— *Cause of action—Suit for possession and declaration of right to participate in permanent settlement of a mehal resumed under* [illegible] the [illegible] was [illegible] to be [illegible] The recorded proprietors of the adjoining permanently-settled estate, to which the chur was a contiguous accretion, refused to make a permanent settlement with Government at the rent demanded The chur was then held khas by Government for some time and subsequently leased out for temporary periods to strangers. In these temporary leases Government [illegible]

torate treasury In 1867 Government made a permanent settlement with the defendant, one of the recorded proprietors of the contiguous estate, of the entire chur and refused the application of other shareholders in the estate to be joined in the settlement. The Collector, at the request of the defendants, applied the deposit in his treasury in satisfaction of the Government revenue An unsuccessful shareholder brought a civil suit against the defendant for possession and declaration of his right to participate in the settlement. *Held* that the suit was not barred, as the period of limitation commenced from the date of the settlement with the defendant. KRISHNA CHANDRA SANDYAL CHOWDRY *v.* HARISH CHANDRA CHOWDRY . . 8 B. L. R., 524

S. C. KRISTO CHUNDER SANDYAL *v.* KASHEE KISHORE ROY CHOWDHRY . 17 W. R., 145

KRISTO CHUNDER SANDEL CHOWDHRY *v.* SHAMA SOONDUREE DEBIA CHOWDHRAIN [22 W. R., 520

112. ——————— and art. 113—*Suit for possession of land based on compromise—Specific performance*—A suit for recovery of possession of land, based on a compromise effected in the course of previous litigation between the parties, is not a suit for specific performance of contract, but a suit for "immoveable property," and would be covered, not by s. 113 of the schedule to the Limitation Act, but by s. 145. In a suit for recovery of possession based on an agreement to surrender possession, the possession of defendants at the time when they made the agreement to deliver over the land to the plaintiff cannot be taken as hostile to the plaintiff, but can only be considered adverse to plaintiff from and after the date of the agreement by reason of defendant's refusal to carry out the promise. BETTS *v.* MAHOMED ISMAEL CHOWDHRY . 25 W. R., 521

113. ——————— *Vendor and purchaser—Transfer of immoveable property—Specific performance of contract—Limitation Act, 1877, arts. 113, 136*—On the 27th October 1865 the vendor of certain immoveable property executed a conveyance of such property to the purchasers. On that date the vendor was not in possession of the property, although his title to it had been adjudged by a decree against which an appeal was pending. The conveyance did not contain any express promise or undertaking on the vendor's part to put the pur- [illegible]

[illegible] one for the specific performance of a contract to deliver possession, to which art. 113 of sch. II of Act XV of 1877 was applicable, but one to obtain posses- [illegible]

[illegible] rights of *C* and abandoned her own *Held* (*per* SETON-KARR, *J.*) that limitation in the present suit by *A* against *C*, the devisee, ran from the date on which the widow admitted the devisee's rights, and not from any prior date, as during the period of the widow's dispute with the devisee she was protecting [illegible]

[8 W. R., [illegible]

115. ——————— *Stranger claiming interest in estate together with an undivided family—Inheritance among such owners.*—In a family of three undivided brothers an estate was purchased by the eldest as manager, on whose application a fourth [illegible] the revenue [illegible] The latter, [illegible] had become [illegible] the estate, [illegible] did not thereby become a member of the undivided family; and the members of it would not have had a right to succeed to his fourth share which would descend to his own heirs, the other three-fourths which he would not have inherited going by survivorship among the members of the family. A son of the eldest brother obtained by the death of his father and uncles sole possession of the whole estate *Held* that he did not take the one-fourth [illegible] been adverse to the latter and to any one claiming [illegible]

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

through him. It followed that a suit to obtain from those claiming through the son, who was now dead, the one-fourth share, brought more than twelve years after possession taken by the son, by a purchaser, relying on a title through the fourth co-proprietor, was barred by limitation under art. 144 of the second schedule of Act XV of 1877. RAMALAKSHAMMA *v.* RAMANNA I. L. R., 9 Mad., 482

COLLECTOR OF GODAVERY *v.* ADDANKI RAMANNA PANTULU . . . L. R., 13 I. A., 147

116. ———— *Benamidars—Purchaser at sale for arrears of revenue.*—In a suit against a purchaser at a sale under Act XI of 1859, s. 13, the plaintiff claimed to have an incumbrance by virtue of two mokurari pottahs executed by the heirs of the last of a series of benamidars, and the question was whether those who had granted the mokurari were entitled to all, or to any, and what part of the land comprised in their grant, and as to this the most important fact was the actual possession or receipt of the rents, it being found that the last benamidar had actual ownership of one-fourth of the property comprised therein. *Held that the incumbrance was good to the extent of such one-fourth share, and the twelve years' bar commencing from the date of possession first held adversely,* the suit was not barred by art. 144, Act XV of 1877. IMAMBANDI BEGUM *v.* KAMLESWARI PERSHAD . . I. L. R., 14 Calc., 109
L. R., 13 I. A., 160

117. ———— *Cause of action—Acts IX of 1871 and XV of 1877.*—*R*, a Hindu widow, granted a jungleburi tenure to certain tenants in respect of a chur belonging to her husband's estate. An amulnama was granted to the tenants signed by a karpardaz of *R* in respect of the tenure. *R* died in January 1861, and was succeeded by *J* and *P*, two daughters, the last of whom died on the 31st December 1880. On her death the grandsons succeeded to the estate. On *R*'s death, *J* and *P* got

grandsons to eject the tenants on amongst other grounds that the grandsons, reversioners, were not bound by *R*'s acts, and that the jungleburi tenure was not binding on them, that the tenants were middlemen and had no right of occupancy, that at all events the plaintiffs were entitled to rent on the area of land then held by the defendants, as there had been large accretions to the amount covered by the amulnama and dowl. The defendants amongst other things pleaded limitation. *Held* that the suit was barred by limitation. Adverse possession began to run on *R*'s death (as *J* and *P*, who represented the estate, were then well aware that the tenants claimed to hold the lands under a permanent lease, and though *J* and *P* received rent, the possession of the tenants was adverse to them), and more than twelve years elapsed before Act IX of 1871 came into force, and therefore the defendants had then obtained a good title by adverse possession as against all the reversioners which could not be defeated by the provisions of the subsequent Limitation Acts of 1871 and 1877. DROBOMOYI GUPTA *v.* DAVIS
[I. L. R., 14 Calc., 323

118. ———— *Limitation Act, 1877, art. 141—Adverse possession against widow—Reversioners.*—The plaintiffs sued for possession of certain

death, contended that the claim was barred. The Court of first instance dismissed the claim as barred by art. 118 of the Limitation Act, and on appeal the District Judge held that the claim was barred by defendant's adverse possession over the property for more than twelve years. On second appeal, it was contended that the suit, being by a Hindu entitled to possession as a reversioner on the death of a female, was governed by art. 141 of the Act, and therefore not barred. *Held* without deciding that question that, as on the facts found the adopted son held adversely to the widow, adverse possession which barred the widow barred also the reversioners, and therefore the claim was barred. *Siva Ganga case, 9 Moore's I. A., 543,* was referred to. GHANDHARAP SINGH *v.* LACHMAN SINGH
[I. L. R., 10 All., 485

119. ———— *Hindu widow—Adopted son—Adverse possession against widow for more than twelve years, Effect of, as against a subsequently adopted son—Title.*—Adverse possession

widow any share thereof. In 1872 the widow adopted the plaintiff, and he too was excluded by the defendant from the management and enjoyment of the property in question. In 1883 the plaintiff sued, as the adopted son of *S*, to recover possession of the property in dispute. *Held* that the suit was barred, the defendant having held adversely to the widow for

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

more than twelve years before the plaintiff's adoption. KRISHNAJI JANARDHAN v. MORBHAT

[I. L. R., 13 Bom., 276

120. ———— *Mortgagee becoming purchaser of share in mortgaged property.*—A mortgagee of an entire undivided estate does not, by a subsequent purchase of a certain share therein from one not in actual possession at the time of convey-

possession since the date of the mortgage. On the 20th January 1885, *B* brought a suit to recover possession of his purchased share *Held* that the subsequent purchase did not change the character of *B* from that of a mortgagee to that of an owner, and that his suit was barred by twelve years' limitation. NUNDO LAL ADDY v. JODU NATH HALDER

[I. L. R., 14 Calc., 674

121. ———— *Co-sharer—Possession of one co-sharer when adverse—Mortgage—Mortgage by three co-sharers—Redemption by one of several mortgagors—Right of the other mortgagors to sue for redemption—Period of limitation for such suit*—In 1847 the property in dispute was mortgaged by three co-sharers, *D*, *A*, and *R*. In 1859 *R* alone redeemed the property and mortgaged it again to a third person. In 1882 the heirs of *D* and *A* brought a suit to redeem the whole of the property, or their portions of it The defence to the suit was that it was barred by limitation, being brought more than twelve years after *R* had re-

rather implied and preserved, their ultimate proprietary right In the case of a co-sharer holding after redemption, limitation is computed only from the date when the possession becomes adverse by the assertion of an exclusive title and submission to the right thus set up, in analogy to the provision which bars an excluded sharer generally after the lapse of twelve years from the time when he becomes aware of his exclusion. As long as possession can be referred to a right consistent with the subsistence of an ownership in being at its commencement, so long must the possession be referred to that right rather than to a right which contradicts the ownership RAMCHANDRA YASHVANT SIRPOTDAR v SADASHIV ABAJI SIRPOTDAR . . I. L. R., 11 Bom., 422

122. ———— *Suit for redemption or recovery of property on payment of a charge—Possession after a redemption by one of several mortgagors*—The plaintiff sought to recover his father's share in two portions of family property, one of which had been mortgaged by the plaintiff's father and the father of the defendant No 1 jointly; the other had been mortgaged by the plaintiff's father jointly with the father of defendant No. 1 and the husband of defendant No. 2 The first was redeemed by the father of defendant No. 1 alone in 1868; the second was redeemed by the defendant No. 1 more than twelve years before the suit. The parties were Mahomedans, and the plaintiff had a brother and three sisters, only one of whom (defendant No. 2) was a party t[illegible] that the suit [illegible] that it was [illegible] brother and [illegible] plaintiffs, the defendant No. 1's possession [illegible] it was [illegible] of the [illegible] he right [illegible] reason [illegible] as co- [illegible] merits. BHAUDIN v. ISMAIL . I. L. R., 11 Bom., 425

123. ———— *Redemption of land by one of two co-mortgagors and re-mortgage thereof—Possession under second mortgage for more than twelve years.*—*A* and *B*, two brothers, being entitled to certain land, mortgaged it in 1852 to *C*. In 1864 *A* redeemed the mortgage and re-mortgaged the land [illegible]

Held that, in the absence of proof that the land was held with an assertion of adverse title, the plaintiff was entitled to a decree. MOIDIN v. OOTHUMANGANNI

[I. L. R., 11 Mad., 416

124. ———— *Mortgage—Conditional* [illegible] *Act* [illegible] brought in 1886 upon a mortgage by [illegible] executed in 1846, the condition being for payment within five years from that date. The deed provided that, in default of payment within the prescribed period, the property mortgaged "will be foreclosed (baibat), and this mortgage-deed will be considered as an absolute sale-deed" Between 1846 and 1886 no foreclosure proceeding or other steps were taken by the mortgagee, and no admission of liability was [illegible] of Act

LIMITATION ACT, 1877—*continued.*

2 ADVERSE POSSESSION—*continued.*

fresh cause of action. *Denonath Gangooly* v. *Nursing Proshad Doss, 14 B. L. R., 87,* referred to MURAIDHAR v. KANCHAN SINGH

[I. L. R., 11 All., 144

125. ——————— *Hindu law—Joint family*

suit, sued to eject a more recent purchaser. The plaintiffs failed to prove division as alleged. One of the members of the family who was in possession of the property to which the sale-deed related did not join in executing it. *Held* that the suit was barred by limitation, since the proposition that the possession of one co-parcener is the possession of all for purposes of limitation has no application as between a purchaser from one of the co-parceners and the other members of the family. *Ram Lakhi* v *Durga Charan Sen, I. L. R, 11 Calc., 683,* followed. MUTTUSAMI v. RAMAKRISHNA

[I. L. R., 12 Mad., 292

126. ——————— *Partition—Alienation by co-parceners—Possession by alienee*.—Where co-parceners have alienated their shares in the joint

1877) *Pandurang* v. *Bhaskar, 11 Bom, 72,* dis-

BHAVRAO v. RAKHMIN . I. L. R., 23 Bom., 137

127. ——————— and art. 141—*Exclusive possession by one of the co-sharers of portions of joint property, the rest being held jointly*—Plaintiff and defendant No 2 (two sisters) inherited

No 2 alone was in possession of the family dwelling-house, but plaintiff visited her sister occasionally there in the character of a guest. There was no evidence that plaintiff asserted her title to the

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

128. ——————— *Limitation Act, 1877, s 10—Trust—Spiritual slavery of disciple to guru—Act V of 1843.*—This was a suit brought in 1881 by the head of an adhinam for declarations that a

previous heads of the muth had agreed to be "slaves" of the head of the adhinam

in 1880 to the management of the muth under the will of his predecessor, dated the same year, and was not a disciple of the adhinam. *Held* that the suit was barred by limitation in respect of the personal claim to manage the endowments as to which no claim had been put forward for sixty years, that the suit was not barred by limitation in respect of the claim to set aside the appointment of the defendant (who entered into possession in 1880 under a will, dated in the

"slave" of his guru could have no legal operation since 1843, and that the adverse possession of the defendant from that year was fatal to any claim of the plaintiff under such agreement GIYANA SAMBANDHA PANDARA SANNADHI v. KANDASAMI TAMBIRAM . . . I. L R., 10 Mad., 375

129. ——————— *Grant of profits of deshmukhi vatan in perpetuity—Hereditary gomastas—How far such grant valid after the*

cuted on Y, who fendants as, and granted, by way of remuneration for their services, R201 and a quantity of grain out of the annual vatan income in perpetuity In consideration of certain sums obtained from the defendants, Y mortgaged the vatan property to the defendants, who subsequently sued Y upon the mortgage That suit was referred to arbitration, and an award was duly made, and a decree upon the award In 1859 Y. In were d. The

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

declaration that the defendants were no longer entitled to the allowance under the sanad, and for an injunction restraining the defendants from the execution of the decree against the vatan. The defendants contended (*inter alia*) that the sanad could not be cancelled, Y having granted it as full owner, and that the receipt by the defendants of the allowance had been adverse since 1864, when their services had ceased Both the lower Courts decided in favour of the plaintiffs. On appeal by the defendants to the High Court,—*Held,* confirming the decree of the lower Courts, that the plaintiffs were entitled to the declaratory decree and to the injunction prayed for. Although the management of the vatan was vested by the sanad in the defendants and their heirs in perpetuity under the title of gomastas, nevertheless the remuneration attached to the office by Y was in derogation of his successor's rights, and was therefore, at any rate in the absence of proof of custom, invalid against them. *Held* also that, assum-

from that date, was not barred KRISHNAJI v VITHALRAV I. L. R., 12 Bom., 80

130. — — — — —— *Suit against Government for inam lands and mokasa amals—Attachment under Act XI of 1852, Effect of—Adverse possession—Mokasa amals, Meaning of.*—In 1826 *A* obtained a decree on a mortgage, awarding him possession and enjoyment of certain inam property, consisting of lands and of cash allowances annually paid from the Government treasury called mokasa amals. *A* and his successors continued in possession down to 1852, when the inam was attached on behalf of Government pending an inquiry, under Bombay Act XI of 1852, into the title of the holders of the inam. The attachment remained in force till 1865, when Government finally decided that the inam property, with the exception of a certain portion, should be restored to those from whose possession it had been taken in 1852 Thereupon *D*, the successor in interest

from the Government treasury In 1883 *D* filed the

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

right, and not on behalf of any rival claimants thereto. *Rao Karan Singh* v. *Baker Ali Khan, L. R., 9 I. A., 99 I. L. R., 5 All., 1; Shidhojirav* v. *Naikojirav, 10 Bom., 228*, and *Tukaram* v. *Sujan Gir Guru, I. L. R., 8 Bom., 585*, distinguished. SHIVRAM DINKAR GHARPURAY v. SECRETARY OF STATE FOR INDIA . . I. L. R., 11 Bom., 222

title to certain lands as the sole uralen of a devasom. He was in possession of the greater part of the land, but one paramba was alleged to be held adversely to him by a person not joined in the suit, and the tenants of part of the remaining land had attorned to the defendant In 1875 a suit was brought by the defendant's brother and others against the plaintiff and others to set aside an alienation by the present plaintiff's predecessor in title, but

132. —————— *Manager of a Hindu temple—Sheraks or servants of an idol—Rights of*

originally as servants and representatives of the deity, and during their occupation they could not by a wish change the nature of their possession. Both they and the plaintiff held the land for the

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

133. ——————— *Adverse possession of defendant supplemented by previous adverse possession of widow by whom defendant was adopted—Limitation Act (XV of 1877), s. 3*—*B* died in 1863 without a son, leaving three widows, *viz.*, *L*, *A*, and *C*, of whom *L* was the eldest and *C* the youngest The plaintiff was unanimously selected by the three

the consent of *L* On the 12th August 1869 *L* adopted the defendant On the 10th August 1881 the plaintiff filed this suit against the defendant, alleging himself to be *B*'s adopted son and as such claiming possession of *B*'s property He did not deny the factum of the defendant's alleged adoption on the 12th August 1869, which constituted (the plaintiff alleged) his cause of action. The defendant contended that he himself was the adopted son of *B*, having been adopted by *L*, the senior widow. He insisted that the plaintiff's adoption was invalid, having been carried out without the consent of *L*, the senior widow He further contended that the plaintiff's claim to the property was barred by limitation, it having been in possession of himself (the defendant) and *L* for more than twelve years before this suit was filed *Held* that the suit was barred by limitation (art 144 of the Limitation Act XV of 1877), the defendant having been in adverse possession of the property for more than twelve years The plaintiff's alleged adoption took place in July 1866 The defendant was adopted and put into possession on the 12th August 1869. This suit was filed on the 10th August 1881, *i e*, two days before the expiration of twelve years from the date of the defendant's adoption. Down to the date of the defendant's adoption, *L* had been either actually or constructively in exclusive possession of the property, such possession being distinctly adverse both to the plaintiff, so far as he claimed to be the adopted

adoption (which was deficient by two days) by the

be said to have derived his liability to be sued from *L*, and that the plaintiff's claim therefore became barred in 1878. PADAJIRAO *v* RAMRAV

[I. L. R., 13 Bom., 160

134. ——————— *Mortgage—Mortgagee in*

from possession by *B*, a trespasser (defendant No. 2), who subsequently held the land and dealt with it as his own for forty years The mortgagor sued both *A* and *B* for redemption. In appeal it was contended by *B* that his possession had been adverse not merely to *A* (the mortgagee), but also to the plaintiff (the mortgagor), and that the suit was barred by limitation The plaintiff contended that *B*'s possession was not adverse to him, because he as mortgagor

term of t

under art.

of 1877),

his possession for twelve years prior to the suit was adverse to the plaintiff (the mortgagor). There may be a possession adverse to the interest of a mortgagee, which nevertheless is not adverse to the interest of the mortgagor In such a case a suit by the mortgagor, or those claiming under him, will not be barred, although one by the mortgagee may be. The case was remanded for a finding on the question of when *B*'s possession became adverse to the plaintiff. CHINTO *v*. JANKI

[I. L. R, 18 Bom., 51

135. ——————— *Alienation of an infant's property by his mother and guardian*—Suit filed in 1891 to recover possession of certain land, the property of a Hindu, who died an infant, leaving him surviving his adoptive mother, who entered into possession and enjoyed the property till her death in 1890. It appeared that in 1861 the deceased and his adoptive mother had conveyed absolutely certain of the properties to the widow of one of his first cousins on his adoptive father's side for her maintenance and that of her daughter, and that it had been assigned by her to *A*, *B*, and *C*. *Held* that the plaintiff's claim to the lands in the possession of *A*, *B*, and *C* was barred by limitation SUNDRAMMAL *v* RANGASAMI MUDALIAR I. L. R., 18 Mad., 193

136. ——————— *Non-payment of melvaram—Claim of kudivaram right by prescription*—In a suit to recover land, of which neither the plaintiff nor his predecessor in title had been in possession within a period of forty years before the suit, the defendants pleaded that the plaintiff had been entitled to receive melvaram only, that the payment of melvaram had been discontinued fifteen years before the date of the suit, and that they themselves were entitled to the kudivaram right in the land.

[I. L. R., 18 Mad., 171

137. ——————— *Mortgage by previous owner out of possession for twelve years—Alienation of endowed property.*—In a suit on a mortgage, dated the 19th June 1888, and executed by the superintendent of a mosque, the endowments of which

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

were comprised in the mortgage, together with defendant No. 1 therein described as his disciple, it was

Nos. 2 and 3 were in adverse possession of the mortgage premises from 1871, and that the mortgage was consequently invalid, whatever the purpose of the debt intended to be secured thereby. SUBBARAMAYYAR *v.* NIGAMADULLAH SAHEB

[I. L. R., 18 Mad., 342

138. ——————— *Patnidar and dar patnidar, Dispossession of—Adverse possession—Relin-*

on the 29th June 1891, and they, on the 28th June 1893, brought a suit for recovery of possession of the disputed land from the defendants The defence was that the suit was barred by limitation. *Held* that art. 144, sch. II of the Limitation

139. ——————— *Mortgage dating from before the annexation of Oude—Oude Redemption*

or of the mortgagor's heir, to redeem, or of any

his larger talukhdari estate, in which the mortgaged ilaka was at the same time incorrectly included as part The right of redemption was restored by Act XIII of 1866, the mortgagor's heir being, however,

mortgagor's heir, having by that time discovered the existence of the mortgage of 1854, sued the heir of the mortgagee to enforce the right to redeem. He

XV of 1877 IMDAD HUSAIN *v.* AZIZ-UN-NESSA

[I. L. R., 23 Calc., 483
L. R., 23 I. A., 8

140. ——————— *Right of possession claimed by tenant against landlord—Mortgage by landlord — Possessory suit in the Mamlatdar's Court by the tenant against the mortgagor—Decree in favour of the tenant—Assignment of*

Court in May 1876. In July 1877 *B* obtained a decree on his mortgage, and in execution he got

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

mortgage, and the present suit, not having been brought until September 1888, was barred by the Limitation Act (XV of 1877). BAPU BIN MAHADAJI *v.* MAHADAJI VASUDEO **I. L. R., 18 Bom., 348**

141. ——————— *Manager—Land appertaining to muth—Sale of miras malki (ownership of miras tenure)—Mirasdar on inam estates, Position of—Limitation Act (XV of 1877), s 28—Right to recover rent* —In 1860, *K*, the manager of a muth, sold to *B* the miras malki (ownership of miras tenure) of certain lands appertaining to the muth subject to the payment of assessment *K* died in the same year, and was succeeded by *R* as manager In 1864 *R* sued *B* to set aside the sale. The suit was dismissed in 1865, and *B*'s miras right was confirmed In 1871 one *G* obtained a decree declaring him to be the legal manager of the muth and removing *R*, who was held to have had no title to the office. In 1887 the plaintiff, who succeeded *G* in the management of the muth, brought the present suit against the defendant, who was the vendee of *B*, to recover possession of the lands or to recover assessment for three years previous to the suit The defendant pleaded that the suit was barred by limitation. The plaintiff contended that, as there was no lawful manager between 1860 and 1875, that period ought to be omitted in computing the period of limitation, and that, as under the deed of sale to *B* the vendee became a tenant, the possession of the vendee and of the defendant could not be adverse *Held* that, if defendant's possession was adverse to the ownership of the muth during twelve years after *K*'s death, the operation of the law of limitation would not be affected by the fact that there was no legal manager during that time *Held* further that in the Bombay Presidency the mirasdar on inam estates is only "a tenant at quit-rent or at a reasonable rent not subject to ejectment so long as he pays it," and as there was nothing in the sale-deed passed by *K* to *B* which required a different construction to be put on the miras tenure created by it, *B*'s possession under it

THITE . . . . **I. L. R., 18 Bom., 507**

142. ——————— *Suit for declaration that lands are khoti—Allegation of fraud—Survey Settlement Act (Bom Act I of 1865).*—A mixed khoti village, consisting of khoti and dhara lands, belonged to two co-sharers, *P* and *D*, each of them

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

passed kabulats to Government in alternate years

required kabuliat The management of the village was restored to him and certain surplus profits were handed over to him by Government. In the year

The suit was dismissed on a technical ground. Subsequently in the years 1881 and 1884, *D* got decrees

revenue records. In the year 1858-59 *S* passed a kabuliat as a half sharer in the khoti, and enjoyed the khoti profits for one year. Afterwards plaintiff No 1, one of *S*'s sons who died in the meanwhile, having passed the annual kabuliat in 1892-93 and

(*inter alia*) that the claim was time-barred Both ... declaration, ... first Court ... rued to the ... ered on the management, and the Appeal Court holding that the cause of action accrued in 1881 and 1884, when

present plaintiffs) having ever been in possession of any share of the profits of the lands in dispute, not even in the year when *S* passed the kabuliat and managed the village, and their right to such possession being throughout denied by *D*, the claim was beyond time *Held* further that the provisions of s 18 of the Limitation Act (XV of 1877) did not apply. DHONDO RAMCHANDRA *v.* VASUDEO SAKHARAM SOMAN . . **I. L. R., 24 Bom., 104**

143. ——————— *Estate in the possession of the widow of the last male survivor of a family co-parcenary — Possession first obtained through*

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

her, held, adversely to the heirs, by the widow of

dants, who were in possession, to recover what had

died in 1826. His younger brother survived him, and, having taken the whole estate by survivorship, died in 1833, leaving a widow, who died in 1843. The latter widow, having inherited the estate from her husband for her life-estate, there being no co-parcener left, gave a share of her inheritance to the abovementioned widow of the elder brother. So assigned, the property remained, with the addition in 1843 of the share which the younger brother's widow had kept for herself, in the possession of the other widow, the one first abovementioned. After many years, this

reversionary heir, but here the widow, through whom the defendants claimed, had been from 1843 in adverse possession for more than twelve years. The suit was therefore barred under the Limitation Act (XV of 1877). This judgment was affirmed by their Lordships MAHABIR PERSHAD *v* ADHIKARI KOER . . . I. L. R., 23 Calc., 942

144. ——————— *Purchase by conditional sale—Vendor remaining in possession as tenant holding over—Possession not shown to be adverse.*—In 1866 the plaintiff bought the lands in suit by

years, the sale to plaintiff became absolute, and *G*

that *G* acknowledged the plaintiff's title in his sale-deed dated 1881 to the second defendant; and that

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

the suit was not barred ANANTHA BHATTA *v.* HOLEYA DEYYU . . I. L. R., 19 Mad., 437

145. ——————— *Landlord and tenant—Permanent tenant—Notice to pay enhanced rent or*

date. The tenant denied the liability to pay enhanced rent, and, stating that he held the land on payment of Government assessment only, refused to quit. The inamdar, more than twelve years after the date

twelve years. *Held* also that s. 23 of the Limitation Act (XV of 1877) had no application to the case. GOPAL RAO KRISHNA RAJOPADHE *v.* MAHADEVRAO BALLAL MULE . . I. L. R., 21 Bom., 394

146. ——————— *Suit for possession of*

actual possession may remain with the judgment

147. ——————— *Alienation by a Hindu widow—Subsequent adoption by widow—Suit by the*

Whether art. 140 or art. 144 of sch. II of the Limitation Act (XV of 1877) applied to the case, the suit was not barred; for if it fell under art. 140, the possession of the defendants adverse to the widow could not affect the plaintiff's rights, and if it fell,

plaintiff

property

Kumar Ghose, I. L. R., 9 Calc., 934, and *Kokil-mons Dassia v. Manick Chandra Joaddar, I. L.*

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

R., 11 Calc., 791, followed. *Per* CANDY, *J.*—The

MORO NARAYAN JOSHI *v.* BALAJI RAGHUNATH
[I. L. R., 19 Bom., 809

148. ——————— *Suit by shebait for possession of debutter property alienated by former shebait — Hindu law, Endowment — Position of Hindu idol—Limitation Act, art. 134.*—A suit was brought in 1892 by the shebait of an idol for recovery of khas possession of mokurari property belonging to the idol, and for a declaration that a dar-mokurari executed by the preceding shebait in 1857 in respect of the mokurari property, the executant professing to act as guardian of her minor son, and a kobala

Act (XV of 1877). *Held* that the idol is a judicial person capable of holding property, and the possession of the defendants, who professed to derive title not from the idol, but ignoring its rights, must be taken to have become adverse to the idol from the dates of the two alienations, and, although it is true that an idol holds property in an ideal sense, and its acts relating to any property must be done by or through its manager or shebait, yet that does not show that

Moore's I. A., 270 13 W. R., P C., 18; Prosunno

[I. L. R., 23 Calc., 536

149 ——————— *Formal possession* —

PRASAD . . . I. L. R., 21 All., 269

150.——————— *Diluviation—Subordinate tenure—Suit for recovery of possession of land—Re-formation on the site of plaintiffs' villages—Burden of proof*—In a suit brought by the plaintiffs on the 10th December 1888, for recovery of

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued*

1878, 1880, 1883, and 1892, the defence was that the suit was barred by limitation, and that the lands were not re-formation, but accretion to the defendants' village of C. *Held* that, inasmuch as a grantor of a subordinate tenure is not bound to sue for trespasses committed against his tenant during the continuance of the tenure, and that his right of action accrues when the tenancy comes to an end, the suit was not barred by limitation. *Held* also that, as the plaintiffs' title to, and possession of, the villages of K and M, down to the time of their diluviation, was not denied, and as it was found that the disputed plots of land were part of the said villages, it was not incumbent on the plaintiffs to prove possession of the lands in dispute previous to the diluviation, but the onus lay on the defendants to prove adverse possession for more than twelve years prior to the institution of the suit. *Woomesh Chunder Goopto v. Raj Narain Roy, 10 W. R., 15,* and *Davis v. Abdul Hamed, 8 W. R., 55,* referred to GUNGA KUMAR MITTER *v.* ASHUTOSH GOSSAMI
[I. L. R., 23 Calc., 863

151. ——————— *Suit by hereditary trustee to set aside invalid alienation—Alienation of property of religious endowment*—In a suit

defendant On the 17th September 1868, the first defendant's mother alienated her right to the joint management to the first defendant, who, however,

SANNADHI. GNANASAMBANDA PANDARA SANNADHI *v.* VELU PANDARAM . I. L. R., 19 Mad., 243

In the same case in the Privy Council,—*Held* the possession delivered to the purchaser was adverse to the vendors After the twelve years' period of

office and the claim for the property in regard to the application of art 124 of sch. II of the Act and of s 28 If there were, art 144 would apply to the claim for the property. In order to fix the starting point for limitation at a date later than that of the

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

transfer, it was contended that the office and title were held in successive life-estates. If that conten-

... and inconsistently with the general law. This applied to both the office and the property. *Held* that the law of inheritance did not permit the creation of successive life-estates in this endowment; the above ruling being also contrary to the judgment in *Trimbak Bawa* v. *Narayan Bawa (I. L. R., 7 Bom., 188)*; and that the plaintiff could not claim to have been entitled otherwise than as heir to, and from, and through his father, in whose lifetime the title had been extinguished by lapse of time and adverse possession of the defendant GNANASAMBANDA PANDARA SANNADHI *v.* VELU PANDARAM [I. L. R., 23 Mad., 271 L. R., 27 I. A., 69

152. ——————— *Suit to set aside alienation of property of religious endowment—Trustee's title barred by adverse possession as against his predecessor*—The holder of the office of trustee in a temple succeeded to that office in 1893. His predecessor had remained in office for over twelve years, but had never sued for the recovery of certain lands. A suit being now brought to recover the said lands *on the ground that* they provided the emoluments of the office of meikaval in the temple,—*Held* that the suit was barred by limitation, the adverse possession held during the previous office-holder's time barring his successor. CHIDAMBARAM CHETTI *v.* MINAMMAL . . I. L. R., 23 Mad., 439

See RADHABAI *v.* ANANTRAV BHAGWANT DESHPANDE . . I. L. R., 9 Bom., 198

153. ——————— *Symbolical possession.*—

... reserving a nominal rent. Subsequently *L N* brought a suit for possession of the 2 annas and 8 pies share against *H N* and his co-sharers, and after the death of *L N* the plaintiff obtained a decree. In March 1882 the plaintiff obtained symbolical

... —*Held* that the suit was

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

... the bar of limitation. *Bejoy Chunder Banerjee* v. *Kally Prosonno Mookerjee, I. L. R., 4 Calc., 327,* referred to. GOSSAMI DALMAR PURI *v.* BEPIN BEHARY MITTER . . I. L. R., 18 Calc., 520

154. ——————— *Symbolical possession.*—The plaintiff purchased the land in dispute on 20th April 1876 at a Court sale held in execution of a decree against defendant's father, and obtained symbolical possession through the Court on 7th September 1876. At the date of the sale, and subsequently

... the defendant's possession having been adverse to the plaintiff for more than twelve years. LAKSHMAN *v.* MORU . . . I. L. R., 16 Bom., 722

155. ——————— *Symbolical possession*—

... tion, and his application was registered as a suit under s. 334 of the Civil Procedure Code. *Held* that the plaintiff's claim was barred by limitation. When his application was converted into a suit under

... in either case the defendant could avail himself of the judgment-debtors' possession, which was adverse to the plaintiff. NAMDEV *v.* RAMCHANDRA GOMAJI MARWADI . . . I. L. R., 18 Bom., 37

156. ——————— *Symbolical possession—Effect of symbolical possession against third parties—Auction-purchaser—Right of auction-purchaser to ... to that of*

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

was purchased by the defendants, who were put into possession by the Court on the 26th March 1885. On the 28th March 1885, the plaintiff sued *A* and *D*'s wife (*D* being then in prison) to recover possession of the property. A decree was passed, in execution of which he obtained symbolical possession through the Court on the 8th February 1886. When he sought to take actual possession, he was resisted by the defendants. Thereupon the

of 1877). The defendants had a right to tack on the period of their own adverse possession as against the plaintiff to that of *D*'s adverse possession as against *A*. The symbolical possession obtained by the plaintiff did not break up the continuity of the adverse possession of the defendants and the person through whom they derived their title. HARJIVAN *v.* SHIVRAM . . . I. L. R., 19 Bom., 620

157. ——————— *Suit for possession of*

BABURALI . I. L. R., 21 Calc., 140

158. ——————— *Continuance of possession—Payment of rents and profits to rightful owner during attachment by Magistrate under s 146, Criminal Procedure Code*.—If the person, who is

drawal of such attachment, and limitation does not run against him during such period. JAGUBANDHU BHATTACHARJEE *v* HARI MOHAN RAY

[1 C. W. N., 569

159. ——————— *Suit by karnavan to recover lands alienated by previous karnavan.*—The plaintiff sued as the karnavan of a Mapilla tarwad to recover lands in the possession of the defendants, who were a donee from, and the descendants of, a previous karnavan and their tenants It appeared that the alleged previous karnavan had died less than twelve years before the suit was filed, but more

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued*

160. ——————— *Gift of a life-interest.*—The karnavan of a Malabar tarwad executed an instrument described as a vasyat, whereby he made a gift of a life-interest in certain self-acquired property, to come into operation at once in 1854. The members of his tarwad acquiesced in this disposition of the property. The donor died in 1859, and the donee in 1880 In a suit brought in 1886 by his successor in the office of karnavan to recover

161. ——————— *Suit to recover estate*

estate at an enhanced rent was, however, given to him at the same time *Held* that the suit was not barred by limitation, no adverse possession being shown. MAHADEVI *v.* VIKRAMA

[I. L R, 14 Mad, 365

162. ——————— *Suit for possession—Purchaser at a patni sale under Reg. VIII of 1819 how affected by adverse possession prior to date of sale*.—A person who has held possession of property adversely against a former proprietor cannot be allowed, in a suit for possession, to set up such adverse possession against a person who has purchased the property at a patni sale, held under Regulation VIII of 1819, within twelve years from the date of the institution of the suit The purchaser is

163. ——————— *Burden of proof*.—The plaintiff, who was the sister of the defendant, sued in 1888 to recover from him a moiety of a paramba purchased by them jointly in 1877 In 1878 the

adverse possession lay on the defendant. AIMA *v.* KUTTI . . . I. L. R., 14 Mad., 96

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

164. ———— and s. 19—*Mad. Reg. II of 1802, s. 18—Starting point of limitation—Acknowledgment—Adverse possession of partial interest in land.*—Suit by the zamindar of Shivaganga to recover certain land as part of his zamindari from the defendants who claimed title under a deed of gift, dated in 1830 from the person then in possession of the zamindari. The istimrar zamindar died in 1829. After his death, certain persons were in possession without title; but in February 1863 his daughter, *K N*, obtained a decree in the Privy Council against the person then in possession of the zamindari, in execution of which she was put into possession. In

the plaintiff, as possession of a limited interest in immoveable property may be as much adverse for the purpose of barring a suit for the determination of that limited interest as is adverse possession of a

suit of 1876 did not amount to an acknowledgment of the zamindarni's title, and did not give a new cause of auction to her successors; (4) that the cause of action having arisen to the then rightful owner of the zamindari in 1830, the plaintiffs' suit was barred by limitation. SANKARAN *v.* PERIASAMI

[I. L. R., 13 Mad., 467

165. ———— and art. 123—*Distributive share under Mahomedan law—Suit for possession.*—A Mapila, alleging that certain "family property" had been enjoyed by herself and the defendants (who were her relations on the mother's side) in common till one year before suit, when she was excluded from possession, now sued to recover the share to which she claimed to be entitled under the Mahomedan law of inheritance. It appeared that the property had been acquired in the lifetime of the plaintiff's maternal grandfather, who had died more than thirty years before suit, and that

twenty years before the present suit. *Held* by the Full Bench that the plaintiff's cause of action arose not from the date when her share became deliverable on the death of the persons to whom the property originally belonged, but on her exclusion from enjoyment of the property, and that the suit was governed by art. 144, and not art. 123, of the Limitation

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*concluded.*

Act, and was not barred by limitation ABDUL KADER *v.* AISHAMMA . I. L. R., 16 Mad., 61

166. ———— *Deed given by debtor to creditor assigning or appropriating rents till debt was paid—Possession of debtor by tenants.*—Where under an instrument a debtor allotted to his creditor his aivaj on account of deshpande hak and inami recoverable from the villages and undertook not to meddle till the aivaj was paid, and the instrument did not describe the lands mentioned therein by metes and bounds, but only as being in the occupation of certain persons paying so much rent, and contained a clause that the aivaj of R63 (the sum total of rents) had been allotted, and that the

claim was held not barred. HANMANT RAMCHANDRA DESHPANDE *v.* BABAJI ABAJI DESHPANDE

[I. L. R., 16 Bom., 172

———— art. 145 (1871, art. 147; 1859, s. 1, cl. 15).

1. ———— *Deposit—Demand—Cause of action.*—The plaintiff, on leaving Calcutta in 1850, deposited a sum of money with *A*, *B*, and *C*, on

deposit. This suit was brought against *C* and the representatives of *A* and *B* to recover the amount deposited, and a decree was passed against *C* on his own admission. But the representatives of *A* and *B* set up that the suit was barred. *Held* that it was not a deposit under s. 1, cl. 15, of Act XIV of 1859. But held also, in accordance with the English cases

was barred. PARBATI CHARAN MOOKERJEA *v.* RAMNARAYAN MATILAL

[5 B. L. R., 396 : 16 W. R., 164 note

But *see* BRAHMAMAYI DASI *v.* ABHAI CHARAN CHOWDHRY . 7 B. L. R., 499 : 16 W. R., 164

2. ———— *Deposit of Government revenue with Collector pending partition—Account,*

holders, including the plaintiff's vendor, and subsequently the plaintiff, paid to the Collectorate what they thought due from them on account of Government revenue. Upon an account stated in 1857 it was ascertained that, after all necessary deductions, a sum of R655 was due to the plaintiff, who in 1864 applied to the Collector for payment of the amount;

LIMITATION ACT, 1877—*continued.*

but the application was rejected, as the money had been previously drawn away by certain creditors of his vendor. In 1867 he sued the Collector for recovery of the amount. The defence set up was that the suit was barred by lapse of time. *Held* that

that the case came under cl. 16, s. 1. GADIND CHANDRA *v.* COLLECTOR OF DACCA

[3 B. L. R., Ap., 57 : 11 W. R., 491

In another case the Collector was held to be a depositary within cl 15 of s. 1, Act XIV of 1859, as to a claim for malikana. GOVERNMENT *v.* RHOOP NARAIN SINGH . . . 2 W. R., 162

3. ———— *Collector—Depositary—Suit to recover surplus sale-proceeds of sale for arrears of revenue.*—Where *A* instituted a suit in November 1889 to recover from the Secretary of State in Council the surplus sale-proceeds of three talukhs sold for arrears of Government revenue on 3rd October 1877, which sale-proceeds were in the

I. L. R., 16 Calc., 254

See SECRETARY OF STATE FOR INDIA *v.* GURU PROSHAD DHUR . . I. L. R., 20 Calc., 51

1. ———— art. 146—*Suit to recover possession of mortgaged property—Demand.*—In 1842 *H C* executed, in favour of the plaintiff, his brother, who was in possession of the family property as kurta and administrator of the estate of their father, a mortgage of his (*H C's*) share of the estate in con-

contended that the suit was barred by lapse of time. *Held*, on the construction of the mortgage-deed, and under the circumstances of the case, *per* GARTH, *C.J.*, that a demand was necessary; *per* MARKBY, *J.*, that the words "on demand" did not postpone the date of payment, and that the mortgage-money became payable at once. *Per* GARTH, *C J.*, and MARKBY, *J.*—A demand was made in 1847 on the agreement to partition the property The suit therefore was barred by Act XIV of 1859

LIMITATION ACT, 1877—*continued.*

IX of 1871, moreover, only applies to cases in which some part of the principal or interest of the mortgage-debt has been paid RAM CHUNDER GHOSAUL *v.* JUGGUTMONMOHINEY DABEE

[I. L. R., 4 Calc., 283 : 3 C. L. R., 336

2. ———— and arts. 144, 132—*Suit for foreclosure.*—The period of limitation prescribed for a suit for foreclosure by the

1. ———— art. 147—*Mortgage—Sale or foreclosure—Adverse possession.*—In 1823 the trustees of a marriage settlement invested the trust funds

to remain in the house as long as he pleased, the rent of the premises being set off against the income of the trust funds to which he was entitled under the settlement. In execution of a money-decree against the mortgagor, his right, title, and interest in the premises were purchased by the judgment-creditor, a lady who, at the time of execution and sale, lived in the mortgagor's house. After the purchase, all parties continued to live in the house as before. The mortgagor died on the 14th of August 1867, and on the 13th of August 1879 the present suit for sale or foreclosure was instituted by the plaintiff, in whom the legal and beneficial interest in the trust funds had become vested. *Held* that the position of the judgment-creditor under the sale of 1866 was not adverse to the

distinguished MANLY *v.* PATTERSON

[I. L. R., 7 Calc., 394

2. ———— and art 132—*Suit to enforce payment of money charged upon immoveable property—Suit by a mortgagee for sale.*—A suit upon a bond for money payable on demand by which immoveable property

(Limitation Act). SHIB LAL *v.* GANGA PRASAD

[I. L. R., 6 All., 551

3. ———— *Mortgagor and mortgagee—Suit to follow mortgaged property.*—*A* mortgaged his property to *B* in 1867 by a simple mortgage In 1868 *A* sold the property to *C*. In 1870 *B* brought a suit on his mortgage against *A* only, and obtained a mortgage-decree. In 1883 *A* brought a suit against *C* to enforce his lien against the mortgaged property. *C* pleaded that the suit was barred by limitation under cl 132 of the Limitation Act (Act XV of 1877) *Held* that the suit was governed by art. 147, sch. II of Act XV of 1877, and therefore

LIMITATION ACT, 1877—*continued.*

was not barred by limitation. BROJO LAL SINGH *v.* GOUR CHARAN SEN . I. L. R., 12 Calc., 111

4. ———————— *Mortgage—Mortgagee, Suit by a, to realize mortgage-debt by sale of mortgaged property, under power of sale—Cause of action—Construction.*—By a mortgage-bond the first defendant mortgaged, on the 1st January 1864, certain property to plaintiffs' deceased father, with an implied power to sell the same if the debt was not satisfied at the expiration of seven years from that date. On the 2nd January 1883, the first plaintiff filed a suit in his own name, as manager of the family, to have the debt realized by the sale of the mortgaged property. The third defendant insisted upon plaintiff's other two brothers being joined as co-plaintiffs, and they were so joined on the 1st March 1883, at which date both the lower Courts were of opinion that the suit was barred under s 22 and art. 132 of the Limitation Act (XV of 1877). On appeal by the plaintiffs to the High Court,—*Held*, reversing the lower Courts' decrees, that plaintiffs' suit was governed by art. 147 of the Limitation Act (XV of [illegible]

from the date of the mortgage. The period of limitation was sixty years from the 1st January 1871. GOVIND BHAICHAND *v.* KALNAK [I. L. R., 10 Bom., 592

5. ——— and art. 132—*Suit on a mortgage-bond —English mortgage—"Mortgage" and "Charge"—Transfer of Property Act, ss. 58, 60, 67, 83, 86, 87-89, 92, 93, 100.*—A suit on a mortgage-bond to enforce payment by sale of premises hypothecated is governed by art 132, and not art. 147, of the Limitation Act. *Brojo Lal Sing* v. *Gour Charan Sen, I. L. R., 12 Calc., 118,* overruled. *Shib Lal* v. *Ganga Pershad, I. L. R., 6 All, 551,* dissented from. The clear distinction drawn for the first time between "mortgage" and "charge" in the Transfer of Property Act is not observed in the Limitation Act. Art. 147 of the Limitation Act relates to special kind of mortgage known as English mortgage, and includes only that class of suits in which the remedy is either foreclosure or sale in the alternative GIRWAR SINGH *v.* THAKUR NARAIN SINGH [I. L. R., 14 Calc., 730

6. ———————— and art. 132—*Mortgage as distinguished from a charge.*—In 1867 the defendant borrowed R125 from the plaintiff and gave him a bond agreeing to pay interest at two per cent. per month. The bond provided that the whole debt, including principal and interest, was to be repaid within four years from the date of its execution It further stated that certain property had been mortgaged to the plaintiff as security for the loan, and that, if the principal and interest were not paid within the time fixed, the plaintiff was to take up the management of the property. It also contained the following clause: "We will redeem the mortgaged property on the day on which we shall pay the amount of the principal and the amount of the interest that may be found due on making up the account." In 1886 the plaintiff sued the defendants to recover by sale of the property the sum of R250 as principal and interest due on the bond. It was contended that the bond created merely a charge upon the property in question, and was not a mortgage, and that the suit was barred by art. 132 of sch. II of the Limitation Act (XV of 1877) *Held* that the document was a mortgage, and that the suit was not barred, being governed by art. 147, and not by art. 132, of sch. II of the Limitation Act. MOTIRAM *v.* VITAI . . . . I. L. R., 13 Bom., 90

7. — [illegible]
from a [illegible]
sale of [illegible]
gage.— [illegible]
as rega [illegible]
respect of this we have given to you in writing as a nazar gahan (*i.e.*, sight mortgage) the fields which belong to ourselves, and which we ourselves are enjoying. If we do not pay according to contract, you may sell the said fields through the Court and recover the amount. If any balance remains, we will pay it off personally or by means of our other property." *Held* that the above stipulation created a mortgage and not a mere charge on the fields in question, and that art. 147 of sch. II of the Limitation Act (XV of 1877) applied to a suit by the obligee against the surety under the bond to enforce his lien by sale of the property mortgaged. ONKAR RAMSHET MARWADI *v.* GOVARDHAN PARSHOTAMDAS . . I. L. R., 14 Bom., 577

8. ———————— *Mortgage—Bond—Charge* [illegible]

village ped, on all the land of which two numbers do you take satisfaction for the said money; and if it should be insufficient, I will personally make satisfaction."—*Held* that the transaction was a mortgage governed by art 147, sch. II of the Limitation Act (XV of 1877), and not a charge governed by art. 132. *Khemji* v. *Rama, I. L. R., 10 Bom, 519,* and *Rangasami* v. *Muttukumarappa, 10 Mad., 509,* dissented from. *Motiram* v. *Vitai, 13 Bom., 90; Venkatesh* v. *Narayan, I. L. R., 15 Bom., 183,* and *Baraji* v. *Tatya, P. J., 1891, p. 85,* followed. DATTO DUDHESHWAR *v.* VITHU [I. L. R., 20 Bom., 408

9. ———————— *Usufructuary mortgage—Personal covenant to pay.*—Where a usufructuary mortgage contains a personal undertaking to pay the amount secured thereby, the limitation applicable to a suit brought on the mortgage is governed by art. 147, Limitation Act XV of 1877. *Sivakami Ammal* v. *Gopala Savundram Ayyan, I. L. R., 17 Mad., 131,* referred to UDAYANA PILLAI *v.* SENTHIVELU PILLAI . I. L. R., 19 Mad., 411

LIMITATION ACT, 1877—*continued.*

10. ———— *Equitable mortgage by deposit of title-deeds—Suit by equitable mortgagee for foreclosure and sale—Right of suit.*—An equitable mortgagee by deposit of title-deeds is a mortgagee within the meaning of art. 147, sch. II of the Limitation Act (XV of 1877), and the period of limitation for a suit by such a mortgagee is sixty years, as therein prescribed. A mortgagee by deposit of title-deeds has the right to sue for foreclosure or sale. MANEKJI FRAMJI *v.* RUSTOMJI NASERWANJI MISTRY . . . I. L. R., 14 Bom., 269

11. ———— *Mortgage-bond containing a power of sale in case of default—Suit by a mortgagee to recover the mortgage-debt from mortgaged property and from mortgagor personally—Personal remedy against mortgagor.*—Where certain land was given as security for repayment of a loan under an instalment bond which contained an express provision for sale of the property in case of default, it was *held* that the bond was a mortgage-bond, and that art. 147 of the Limitation Act (XV of 1877) applied to a suit to recover the instalments due under the bond by sale of the mortgaged property. *Held* also that the limitation for the personal remedy against the mortgagor was three years. BULAKHI GANU SHET *v.* TUKARAMBHAT

[I. L. R., 14 Bom., 377

12. ———— *Bonds creating interest in land, Construction of—Mortgage—Charge on immoveable property.*—Bonds by which the property mentioned therein is declared to be a security for a loan have been always regarded in the Bombay Presidency as creating the relationship of mortgagor and mortgagee, and fall under art. 147 of sch. II of the Limitation Act (XV of 1877). VENKATESH SHETTI *v.* NARAYAN SHETTI

[I. L. R., 15 Bom., 183

13. ———— and art. 144—*Suit for foreclosure or sale—Transfer of Property Act (IV of 1882), ss. 58 (c), 67, 87—Mortgage by conditional sale—Decree for foreclosure and possession.*—On 28th March 1871 the defendant's father borrowed a sum of money from the plaintiff's father and placed him in possession of certain land under an instrument of mortgage, which provided for the application of the usufruct in liquidation of the interest and then in reduction of the principal the instrument also contained a covenant for the repayment, in four years of the balance that might then be due by the mortgagor, and a stipulation that, on default, the mortgagor was to surrender the property to the mortgagee as if it had been sold to him. In 1874, the mortgagor resumed possession without discharging the mortgage-debt. The mortgagee having died, his sons, on 14th April 1888, filed the present suit on the mortgage and prayed for a decree for foreclosure or sale. *Held* that the suit was not barred by limitation, and the plaintiffs were entitled to a decree for foreclosure with a direction that possession be delivered to them. AMMANNA *v.* GURUMURTHI I. L. R., 16 Mad., 64

14. ———— *Suit for sale of mortgaged property—Bom. Reg. V of 1827, s. 15, cl. 3—Special agreement.*—Plaintiff brought this suit in 1895 on a mortgage bond, dated 1870, to recover the balance due on the mortgage by sale

possession in lieu of interest, and that such possession should continue until the mortgagor paid the principal and interest that remained unpaid when the mortgagee took possession. The Judge dismissed the suit, holding that the claim for possession was time-barred, and the claim for the sale of the property could not be enforced, as the mortgage-bond contained a special agreement which took the case out of cl. (3) of s. 15 of Bombay Regulation V of 1827. On appeal,—*Held*, reversing the decree, that s. 15 of Bombay Regulation V of 1827 was not applicable, as the mortgagee never was in possession, and that the claim to enforce the mortgage security by sale was not barred. SIDHESVAR *v.* BABAJI

[I. L. R., 23 Bom., 781

15. ———— *Mortgage by conditional sale—Mortgagee in possession—Suit for foreclosure and recovery of possession—Redemption.*—A mortgagee by conditional sale, who was put into posses-

recovered is, however, possession as mortgagee subject to the mortgagor's right of redemption. AMAN ALLI *v.* AZGAR ALI MIA . I. L. R., 27 Calc., 185

———— art. 148 (1871, art. 148, 1859, s. 1, cl. 15).

See CASES UNDER s. 19—ACKNOWLEDGMENT OF OTHER RIGHTS.

1. ———— *Suit for redemption—*

commenced on a claim of the defendant to a title altogether inconsistent with the mortgage. TANJI *v.* NAGAMMA 3 Mad., 137

2. ———— *Relation of trust*—Cl. 15, s. 1, Act XIV of 1859 applied when there was some relation of trust, whether the property was given in mortgage or pawn or simply deposited for safe custody. RUTTON MONEE DEBAI *v.* GUNGA MONEE DEBIA CHOWDHRAIN 3 W. R., 94

3. ———— *Suit by mortgagor for possession of mortgaged property*—In a suit by a mortgagor after a mortgage has been satisfied for the recovery of the mortgaged property, the period of limitation applicable is that prescribed by cl. 15

LIMITATION ACT, 1877—continued.

of s. 1 of Act XIV of 1859. LALL DOSS v. JAMAL ALI . . B. L. R., Sup. Vol., 901 [9 W. R., 187

4. ——— *Laches—Estoppel.*—The laches of a mortgagor in taking no steps for many years to enforce his alleged rights may afford evidence against the existence of those rights, but cannot estop him from asserting them, if they do exist, at any time within the period of sixty years allowed by s. 1, cl. 15, Act XIV of 1859. JUGGERNATH SAHOO v. MAHOMED HOSSEIN [14 B. L. R., 386 : 23 W. R., 99 L. R., 2 I. A., 49

5. ——— *Suit by a mortgagor for recovery of possession from a mortgagee holding over after expiry of the term of a usufructuary mortgage.*—When a mortgagee in possession under a

[illegible]

6. ——— *Act XIV of 1859, s. 1, cl. 15—Act IX of 1871, s. 29 and art. 148—Usufructuary mortgage—Extinction of mortgagor's title—New starting point by acknowledgment.*—The representatives in estate of a mortgagor, who

[illegible]

period, was barred on the [illegible] by the effect of Act XIV of 1859, s. 1, cl. 15, which barred the suit after the 1st January 1862. Afterwards, by the effect of Act IX of 1871, s. 29, the right of property in the mortgagor was extinguished. In none of the documentary evidence adduced

[illegible]

a lease was made on the 8th January 1872 of some of the mortgaged property by one of the then mort-

[illegible]

judgment in *Citizens Bank of Louisiana v. First National Bank of New Orleans, L. R., 6 E. & I.*

LIMITATION ACT, 1877—continued.

App., 352, referred to. FATIMATULNISSA BEGUM v. SUNDAR DAS . . I. L. R., 27 Calc., 1004 [L. R., 27 I. A., 103 4 C. W. N., 565

Upholding the decision of the High Court in SUNDAR DASS v. FATIMATNISSA 1 C. W. N., 153

7. ——— *Permissive occupation of house—Suit to recover house from heirs of tenant.*—About twenty-five years before suit brought,—R, being possessed of a house, allowed K to occupy it

[illegible]

s. 1, cl. 12, of that Act. RADHABHAI v. SHAMA [4 Bom., A. C., 155

8. ——— *Conditional sale—Suit for*

[illegible]

KESHAV v. RAVJI SADASHIV . . 9 Bom., 79

See SHANKARBHAI GULABBHAI v. KASSIBHAI VITHALBHAI . . . . 9 Bom., 69

RAMJI BIN TUKARAM v. CHINTO SAKHARAM [1 Bom., 199

RAMSHET BACHASHET v. PANDHARINATH [8 Bom., A. C., 236

9. ——— *Suit for redemption—Adverse possession.*—A mortgagor sued his mortgagee to redeem, joining as defendant the person in possession of the mortgaged land, who claimed to hold adversely to both the mortgagor and the mortgagee.

[illegible]

mortgage. VITHOBA BIN CHABU v. GANGARAM BIRAMJI . . . . . 12 Bom., 160

10. ——— *Right of purchaser.*—Where B, an old judgment-creditor of K's father, took out execution against K, whose rights in an estate

LIMITATION ACT, 1877—*continued.*

were accordingly sold and bought by *B* himself, *B* bought not *K*'s right of suit (which as against a

11. ———— *Mad. Reg. II of 1802,*

YAKOVILAGALLA *v.* ALLUNANNALATTA KADINNI [1 Mad., 143

12. ———— *Suit for redemption—*

prosecute his right to redeem and seek his remedy by suit *Ramdyal v. Jawahir Ram, S D A, N. W., 1861, 22nd of April 1861,* overruled. SHEOPAL *v.* KHADIM HOSSEIN . . . 7 N. W., 220

13. ———— *Suit for redemption, 456 (a), of mortgage—Adverse possession—Title,*

not competent to make such transfer, and the mortgagees set up a proprietary title to such property in

14. ———— *Suit for redemption—*

15. ———— and art. 145—*Right to officiate as priest, Nature of suit to establish—Immoveable property*—A right to officiate as priest at funeral ceremonies of Hindus is in the nature of immoveable property, and a suit for redemption of such right therefore falls under art. 131, and not under art 145, of the Limitation Act. RAGHOO PANDEY *v.* KASSY PAREY [I. L. R., 10 Calc., 73: 13 C. L. R., 233

16. ———— *Mortgage—Subsequent agreement conveying to mortgagee for a term of years—Effect of such agreement—"Once a mortgage always a mortgage"—Suit by heirs of mort-*

[I. L. R., 6 Bom., 674

17. ———— and art. 134—*Joint*

contended that a much longer period had expired

of 1882), that the owner of a portion of a mort-

cable to the suit. *Umrunnissa v. Muhammad Yar Khan, I. L. R., 3 All., 24,* distinguished. *Pancham*

LIMITATION ACT, 1877—*continued.*

Singh v. *Ali Ahmad, I. L. R., 3 All., 58,* referred to. NURA BIBI v. JAGAT NARAIN
[I. L. R., 8 All., 295

18. ——— *Mortgage—Redemption by co-mortgagor—Suit by other mortgagors against redeeming mortgagor for redemption of their shares*—Where one of several co-mortgagors redeems the whole mortgage, he thereby puts himself into the position of the mortgagee as regards that portion of

Such period begins to run from the date when the original mortgage was redeemable, and not from the date of its redemption by the aforesaid co-mortgagor. In 1828 one of several co-mortgagors redeemed an

suit was that provided by art. 148, sch. II of the Limitation Act (XV of 1877); that time ran, not from the date of the redemption in 1828, but from the time when it would have run against the original mortgagee if he had been a defendant, *i.e.*, the date of the original mortgage of 1822, and that the suit was therefore barred by limitation. *Nura Bibi* v. *Jagat Narain, I. L. R., 8 All., 295,* and *Raghubir Sahai* v. *Bunyad Ali, Weekly Notes, All., 1886, p. 152,* followed. *Umr-un-nissa* v. *Muhammad Yar Khan, I. L. R., 3 All., 24,* distinguished. *Ram Singh* v. *Baldeo Singh, Weekly Notes, All., 1885, p. 300,* referred to. ASHFAQ AHMAD v. WAZIR ALI
[I. L. R., 11 All., 423
I. L. R., 14 All., 1

19. ——— *Suit for redemption—Mortgagee purchasing equity of redemption from one without title to it—Adverse possession of mort-*

right of the real owner of the equity of redemption where a person having no right in the property pretends to sell to the mortgagee the equity of redemption. PANDU LAKSHMAN MASTEKAR v. ANPURNA . . I. L. R., 21 Bom., 793

20. ——— *Limitation Act (IX of 1871), s. 148—Acknowledgment of title by one of several mortgagees as agent for the others—Acknowledgment by one of several heirs of the mortgagee—Redemption, Suit for.*—Under art. 148 of the Limitation Act (IX of 1871), an acknowledgment of the mortgagor's title by one of several mortgagees as agent for the others is wholly ineffectual, and does not bind the rest. So too is an acknowledgment by one of several heirs of the original mortgagee without effect. The expression "some persons claiming under him" in art. 148 of the Act means some person claiming under him the entirety of the mortgagee's rights. The property in dispute was mortgaged by *H B* to the firm of *K B* in 1816. In 1830 *J*, one of the sons and heirs of *K*, who was then manager of the firm, on behalf of the whole family, sub-mortgaged the property in dispute to a third party, under a bond which recited the original mortgage by *H B* to *K*. In 1885 the defendant, who

of 1816. The plaintiff relied on the acknowledgment made by *J* in 1830 as giving a fresh starting point to limitation. *Held* that the suit was barred by limitation. The acknowledgment by *J*, whether as manager of the firm or as one of the heirs of the original mortgagee, was not sufficient under art. 148 of the Limitation Act (IX of 1871). BHOGILAL v. AMRITLAL . . . . I. L. R., 17 Bom., 173

21. ——— and art. 132—*Interest—Mortgagee's right to interest in a redemption suit—Extent of the right—Transfer of Property Act (IV of 1882), s. 58.*—In 1882 the plaintiffs sued to redeem a mortgage effected in 1833. The Court of first instance allowed the mortgagee interest from

Art. 148, and not art. 132, applies to such a suit; but

due, and no limit to the payment of . . .
DAUDBHAI RAMBHAI v. DAUDBHAI ALLIBHAI
[I. L. R., 14 Bom., 113

——— art. 149 (1871, art. 151; 1859, s. 17).

1. ——— *Suit by or on behalf of Secretary of State for India.*—Art. 149 of the Limitation Act applies only to suits brought by, or on behalf of, the Secretary of State, not to a suit brought by a Municipality. SECRETARY OF STATE FOR INDIA v. KOTA BAPANAMMA GARU
[I. L. R., 19 Mad., 165

2. ——— *Suit to establish right to jalkur—Beng. Reg. II of 1805, s. 2.*—A suit by Government to establish its right and title to a jalkur was barred by limitation under s. 2, Regulation II, 1805, if brought after the expiration of sixty years' adverse possession against Government. COLLECTOR OF RUNGPORE v. PROSUNNO COOMAR TAGORE
[5 W. R., 115

3. ——— *Suit for costs—Public right—Exemption from limitation.*—In a suit for the recovery of costs incurred by the Government of Bengal, in virtue of the Stat. 3 & 4 Wil. IV, c. 41, authorizing the Crown to appoint the East India Company to take charge of appeals and bring them to a hearing.—*Held* the recovery of such costs did not constitute a "public right" exempting from

LIMITATION ACT, 1877—*continued.*

limitation within Regulation II of 1805. GOVERNMENT OF BENGAL *v.* SHUREBFUTOONISSA
[3 W. R., P. C., 31
8 Moore's I. A., 225

4. ——— *Suit by Government for maintenance of a ghatwali tenure in which alteration has been effected by fraud of the zamindar.*—Where a zamindar sold a ghatwali mehal as a mal mehal, and not merely his right to receive the quit-rent from the ghatwal, and the vendee in collusion with the former ghatwal granted him a mokurari tenure, thus changing the nature of the tenure from a ghatwali into a mal tenure,—*Held* that the Government had a right to sue so as to maintain its own nominee in possession of the land as ghatwal, and that the limitation of sixty years was applicable to such a suit PETUMBER DEY *v* JUGGOUNNATH ROY . 18 W R., 130

5. ——— and s. 28—*Suit by Crown for declaration of title and possession of forest land—Mad. Reg. II of 1802—Survival of right—Limitation Act, 1859* —In a suit instituted in March 1879 by the Crown for a declaration of title to certain forest land and for possession of a portion thereof, the defendants alleged that the land has been in their possession for more than sixty years. *Held* that it was incumbent on the Crown, under art 149 of sch II of the Indian Limitation Act, 1877, to show possession of the proprietary rights claimed within sixty years, or, if the defendants proved possession, that such possession commenced or became adverse within such period The District Court having held that, up to April 1st, 1873, when the Limitation Act of 1871 came into force, the limitation for such a suit was twelve years from the time when the cause of action arose, and that the suit was barred by adverse possession for twelve years prior to April 1st, 1873,—*Held* that, even if Regulation II of 1802 applied to claims by the Crown, inasmuch as the Regulation only barred the remedy and did not extinguish the right, and Act XIV of 1859 did not extend to such a claim, the right subsisted when the Limitation Act of 1871 came into operation, and as long as that Act was in force, and that the Crown, being entitled under that Act to sue within sixty years from the date of the cause of action, and under s. 28 of the Limitation Act of 1877 to sue within two years from the 1st of October 1877, the suit was not barred. SECRETARY OF STATE FOR INDIA *v.* VIRA RAYAN
[I. L. R., 9 Mad., 175

6. ——— *Suit by Government for recovery of stamp duty in pauper suit.*—Five years after the dismissal of a pauper suit, from the decree in which no appeal had been preferred, Government sought recovery of the stamp duty by attachment and sale of the pauper plaintiff's property. *Held* that the claim, being a "public claim" within s. 17, Act XIV of 1859, was not barred. COLLECTOR OF SOUTH ARCOT *v.* THATHA CHARRY . 8 Mad., 40

SHAIKH MAHOMED *v.* MAHOMED ALI KHAN
[3 B. L. R., Ap., 23: 11 W. R., 67

LIMITATION ACT, 1877—*continued.*

7. ——— *Suit after dispossession—Disputes of private owners—Right of Government.*—A dispute between two private owners, whether as to boundaries of lands, cannot divest the title of either to possession in favour of the Government if the [illegible]

in favour of the party in possession, but his cause of action cannot be kept alive longer than the legal period of limitation of twelve years by the expedient of inducing the Collector to make common cause with him GUNGA GOBIND MUNDUL *v.* COLLECTOR OF THE 24-PERGUNNAHS
[7 W. R., P. C., 21. 11 Moore's I. A., 345

8. ——— *Lessee under Government.*

9. ——— *Suit by purchase of Government rights in a khas mehal* —A suit by the purchaser of the rights of Government in a khas mehal to obtain possession is governed, not by the limitation of sixty years, but by that of twelve years. HOSSEIN BUKSH *v.* AMEENA KHATOON
[20 W. R., 231

BUNDI ROY *v* BUNSEE THAKOOR 24 W. R., 64

10 ——— *Suit by mutwalli for endowed property* —Since the passing of Act XX of 1863, a mutwalli, or manager of a Mahomedan endowment, cannot be considered to be an officer of [illegible]

11. ——— *Encroachment on public highway—Suit by Municipality to remove encroachment—Limitation Act, art. 144—Title by adverse possession.*—The Municipality of Madras sued to recover, as forming part of a highway, a strip of land adjoining the house of the defendant on which a pial had been erected more than forty-five years [illegible]

SARANGAPANI MUDALIAR I. L. R., 19 Mad., 154

——— art. 151.

See DIVORCE ACT, s 55
[I. L. R., 23 Bom., 613

art 152.

See APPEAL—DECREES.
[I. L. R., 23 Calc., 279, 400

LIMITATION ACT, 1877—*continued.*

nounced. YAMAJI *v.* ANTAJI
[I. L. R., 23 Bom., 442

——— art. 155 (1871, art. 153).

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM.
[I. L. R., 2 Calc., 436

——— *Appeal in criminal case—Appeal from the Resident's Court, Bangalore.*—A person who was being defended by Counsel on a criminal charge interfered in the examination of a witness and made a defamatory statement with regard to his character. He was now charged with defamation and convicted in the Resident's Court at Bangalore. On an appeal to the High Court, preferred more than sixty days after the conviction,

mitted. HAYES *v.* CHRISTIAN
[I. L. R., 15 Mad., 414

——— art 156—*Burma Courts Act, 1875, ss. 49, 97—Appeal from Recorder of Rangoon.*—An appeal from the Court of the Recorder of Rangoon to the High Court is an appeal under the Civil Procedure Code, and must be made within the time prescribed by art. 156, sch. II of the Limitation Act. AGA MAHOMED HAMADANI *v.* COHEN
[I. L. R., 13 Calc., 221

———art. 158—*Application to set aside award—Ground for setting aside award—Civil Procedure Code, ss. 521, 522.*—Where, in accordance

MUHAMMAD ABID *v.* MUHAMMAD ASGHAR
[I. L. R., 8 All., 64

——— art. 159—*Suit under Ch. XXXIX, ss. 532 538, of the Civil Procedure Code (1882)—Application for leave to defend suit—Date of service of summons—Sheriff's return of service.*—In a suit under Ch. XXXIX of the Civil Procedure Code (summary procedure on negotiable instruments) the defendant obtained an *ex-parte* order on the 9th January 1896 for leave to appear and defend the suit. The plaintiff on the 23rd January 1896 obtained an order calling on the defendant to show cause why the order of the 9th January 1896 should not be set aside on the ground that the application was not made within ten days from the date of the service of summons. The date of service as shown in the Sheriff's return was the 23rd December 1895. The defendant alleged he had not come to know of the service till the 5th January 1896, as

present stage of the case allow the defendant to show a state of things different from that appearing in his petition. MADHUB LALL DURGUR *v.* WOOPENDRANARAIN SEN . . . I. L. R., 23 Calc., 573

——— art. 162.

See DIVORCE ACT, s. 16.
[I. L. R., 6 Bom., 416

——— art. 164 (1871, art. 157; Civil Procedure Code, 1859, s. 119).

1. ——— *Obligation on defendant against whom ex-parte decree has been passed.*—The object of s. 119, Act VIII of 1859, was to make it imperative on a defendant against whom an

not exceeding thirty days from the ... cution of process to enforce the judgment. GOLAM AHYAH *v.* SHAM SOONDER KOONWAREE
[7 W. R., 375

2. ——— *Meaning of "executing" process of judgment.*—Process of enforcing a judgment (within thirty days from which a defendant may apply to set aside an *ex-parte* decree) has not been executed within the meaning of s. 119, Act VII of 1859, until the proceedings in execution have been brought to a termination by a sale of the property attached. RADHA BINODE CHOWDHRY *v.* MUDHOO SOODUN SIRCAR . . 7 W. R., 198

3. ——— *Act X of 1859, s. 58—Ex-parte decree, Application to set aside.*—Process for enforcing judgment was executed within the meaning of s. 119 of Act VIII of 1859 and s. 58 of Act X of 1859, when an attachment of the property of the defendant had taken place; and any application by the defendant under those sections to set aside an *ex-parte* decree must be made within thirty and fifteen days, respectively, from the date of the attachment. RADHA BINODE CHOWDHRY *v.* DIGAMBUREE DOSSEE. NUND KISHORE DOSS *v.* MAHARAJA OF BURDWAN
[B. L. R., Sup. Vol., 947: 9 W. R., 230

4. ——— The thirty days "after any process for enforcing the judgment has been executed," within which a defendant might apply under s. 119, Code of Civil Procedure, for an order to set aside an *ex-parte* decree, meant thirty days after the execution of any process against the person or

LIMITATION ACT, 1877—*continued.*

property of the defendant. SHIB CHUNDER BHADOOREE *v.* LUCKHEE DEBIA CHOWDHRAIN [6 W. R., Mis, 51

Not process only against the person. BRUHM PARGASH *v.* DUMREE LALL [1 N. W., Ed 1873, 133

See SOOKH MOYEE DOSSEE *v.* NURMOODA DOSSEE [15 W. R, 210

and KALEE PROSAD *v.* DIGAMBUR CHATTERJEE [25 W. R., 72

5. ——— *Notice of ex-parte decree* —It is not necessary that the judgment-debtor should have special notice of any process for enforcing an *ex-parte* decree; he is bound to seek the remedy provided by s. 119, Act VIII of 1859, within thirty days after execution of any process to enforce the judgment SHUMBOO CHUNDER HOLDER *v.* RAM LALL GHOSE . 13 W. R., 436

6. ——— *Application for setting aside ex-parte judgment after expiration of time limited.*—A Judge has no jurisdiction to grant an application, made by a defendant against whom an *ex-parte* judgment has been passed, to set aside the judgment after the expiration of the thirty days allowed by s 119 of the Code of Civil Procedure for making such applications. Such an application must be made within thirty days after the first process for enforcing the judgment against such defendant has been executed. KESHAVRAM VALAD HIRACHAND *v.* RAMCHANDRA TRIMBAK [8 Bom., A. C., 44

ANORAGEE KOOER *v.* ABDOOLLAH KHAN [26 W. R., 99

7. ——— *Application to set aside*

[26 W. R, 99

MAN BIN ALLI. GAMBLE *v.* ABDUR RAHIMAN BIN ALLI . . . . . 12 Bom., 257

LIMITATION ACT, 1877—*continued.*

9.——— *Execution of ex-parte decree —Notice of execution.*—Notice of execution of decree is not sufficient "process for enforcing" it within the meaning of art 157, sch II, Act IX of 1871.

10. ——— Where property had been

from which limitation should be computed under art 164, sch. II of Act XV of 1877. *Pachu v. Jaikishen, Weekly Notes, All., 1884, p. 322,* referred to. HAR PRASAD *v.* JAFAR ALI . I. L. R., 7 All., 345

11.——— *Ex-parte judgment, Application for an order to set aside—Civil Procedure Code, s 108—"Execution of process for enforcing the judgment"*—An *ex-parte* order was made against *S*, to whom a certificate under Act XL

Act, 1877. SUNRAJ KUARI *v.* AMBIKA PRASAD SINGH . . . . . I. L. R., 6 All., 14

12. ——— *Code of Civil Procedure (Act X of 1877), s. 108—Ex-parte decree—Setting aside ex-parte decree.*—An *ex-parte* decree was obtained against a defendant who applied to have it

13. ——— *Ex-parte decree—Application to set aside ex-parte decree—Presidency Small Cause Court Act (XV of 1882), s. 37.*—S. 37 of the Presidency Small Cause Courts Act (XV of 1882) does not apply to an *ex-parte* decree. An application to set aside an *ex-parte* decree passed by a Presidency Court of Small Causes falls within the terms of s. 108 of the Code of Civil Procedure (XIV

LIMITATION ACT, 1877—*continued.*

14. ———— *Execution of process for enforcing the judgment—Civil Procedure Code, s 108—Application to set aside a decree passed ex-parte*.—The action of an amin appointed under

...

enforcing the judgment within the meaning of art. 164 of the ... tion Act, 1877 ... *Nath Misser*, ... MUHAMMAD K ...

[I. L. R., 20 All., 311

————art. 165 (1871, art. 158).

1. ———— *Application for restitution by person dispossessed—Holiday.*—In calculating the

...

that his application was within the limitation of thirty days prescribed by art. 158, sch. II of Act IX of 1871. GURJAR *v.* BARVE . I. L. R., 2 Bom., 673

2. ———— *Dispossession under sale in execution of decree—Summary order.*—A person purchased certain property at a sale in execution of a decree in November 187 : his purchase was confirmed and he obtained a certificate of sale on the 23rd May 1879, from which date he remained in possession.

...

ground that the right to apply for execution was barred. This application was dismissed, but was allowed on appeal ...

...

putting the auction-purchaser out of possession. *He* ... no ... asid ... art. ... ordc ... SIR ...

3. ———— *Dispossession in execution—Application on behalf of a minor objecting to dispossession.*—Limitation Act, 1877, sch. II, art. 165, is applicable to a case where the applicant is a party to the decree which is being executed as well as when he is a stranger. But an application made on behalf of a minor objecting to dispossession ... days ... ...

[I. L. R., 21 Mad., 494

LIMITATION ACT, 1877—*continued.*

————art. 166 (1871, art. 159)

———— *Execution—Sale in execution, the judgment-debtor* ... pr ... *P* ... 18 ...

for the satisfaction of the decree, whereupon *D* agreed not to take proceedings in execution. In breach of this ...

...

taken by *D* in breach of the abovementioned agreement, and within thirty days after *K* obtained possession, he (*b*) applied for a reversal of the orders which had been passed in the aforesaid fraudulent proceedings. ...

...

XII of 1879 ...

KALE *v.* DAMODAR AKHARAM

[I. L. R., 9 Bom., 468

————art. 167 (1871, art. 160).

1. ———— *Symbolical possession.*—A purchaser of immoveable property, sold in execution of a decree must, under Act XV of 1877, sch. II, art. 167, if obstructed or resisted in endeavouring to obtain possession, apply, within thirty days, to the Court under the directions of which the execution-sale was held, to be put into actual possession; and if he omits to do so within thirty days from the time when his taking possession was first obstructed or resisted, his only remedy is by a civil suit. The plaintiffs, on the 31st January 1863, purchased a half share in a certain house at a sale in execution of a decree, but took no steps at the time to take possession of it. In 1869 the Nazir of the Court was directed to put them into possession, and gave them symbolical possession. Afterwards, in 1871, the plaintiffs again, with the assistance of the Nazir, entered upon, and for the space of about a minute remained in possession of, one of the rooms in the house, until they were turned out by the defendants. On the 18th of November 1870, the plaintiffs filed a suit, praying for a declaration of right and for a partition, and to be put into separate possession of the share that might be allotted to them on such partition. *Held* that neither the symbolical possession given to them in 1869 by the Nazir nor the

LIMITATION ACT, 1877—*continued.*

January 1863, when they first became entitled to possession, it was now barred by limitation. SHOTEENATH MOOKERJEE v. OBHOY NUND ROY [I. L. R., 5 Calc., 331

2. ——— *Warrant for possession*—

again made in January 1881,—*Held* that a com-

3. ——— *Civil Procedure Code, 1882, ss 318, 334—Petition by purchaser at Court-sale for possession—Obstruction to execution of decree—Appeal against order.*—On an application made in 1888 under the Civil Procedure Code, s. 318, by the purchaser at a Court sale (who was the assignee of the decree which was being executed), praying for delivery of possession of the property purchased, it appeared that the sale took place in 1885, that it was confirmed in 1886, and that in January 1887 an order was made for delivery of possession to the purchaser The judgment-debtor had resisted the purchaser's efforts to obtain possession in 1887, and set up in bar of the application in 1888 an oral agreement alleged to have been made between him and the purchaser. The application was rejected. *Held* that the application, not being a complaint of obstruction, was not barred by limitation, and should be heard and determined on the merits MUTTIA v APPASAMI [I. L. R, 13 Mad., 504

4. ——— *Minor—Purchase on behalf of a minor during minority—Agent of minor, Omis-*

a sale held in execution of a decree, certain property was purchased on behalf of the applicant, who was then a minor, by the agent nominated by his guardian. An order for delivery of possession was made; but a third party having obstructed, the order was returned unexecuted. No further proceedings were taken by the agent. The applicant, having come of age, applied for delivery of possession within three years from the date of his attaining majority, but more than thirty days after the date of the obstruction and more than thirty days after he came of age. The Subordinate Judge rejected the application as barred, being of opinion that the omission to apply, within thirty days from the date of the obstruction, on the part of the applicant's agent, as well as the applicant's omission to do so within a similar period after he came of age, barred the applicant, whose remedy lay in a fresh suit. *Held* by the High Court that the application was rightly rejected. It was virtually an attempt to renew the old proceedings, and was barred by art 167 of sch II of the Limitation Act If the applicant intended to proceed summarily under the Civil Procedure Code, he should have taken proceedings within a month after he came of age. VINAYAKRAV AMRIT v. DEVRAV GOVIND I. L R., 11 Bom., 473

——— art. 168 (1871, art. 161; Civil Procedure Code, 1859, s. 347).

1. ——— *Time for appeal—Civil Procedure Code, 1859, s. 347.*—To bring an appellant within the terms of s. 347 of the Code of

MITTOO KHAN v. RUHMAN KHAN 8 W. R., 361

In such an application the Judge is bound to see whether the reasons set forth for re-admission are satisfactory or not. SHOMAED ALI SOWDAGUR v. EUSOOF KHAN CHOWDHRY 15 W. R., 80

2. ——— *Application for re-admission of appeal*—The time allowed by s 347 of Act VIII of 1859 within which to apply for the re-admission of an appeal dismissed for default of prosecution should not, where the appellant's pleader has died without his hearing of it, be counted as

3. ——— *Application for re-admis-*

application was not one under s. 558 of the Civil Procedure Code, that it was not barred under art 168 of the Limitation Act, that it was an

See FATIMUNNISSA v. DEOKI PERSHAD [I. L. R., 24 Calc, 850

IKBAL HOSSAIN v. DEOKIE PROSHAD [1 C. W. N., 21

LIMITATION ACT, 1877—*continued.*

——— art. 170 (1871, art. 162).

——— and art. 178—*Application for leave to appeal in formâ pauperis.*—Plaintiffs filed a suit for partition, which was dismissed on the 9th December 1890 On the 17th March 1891, plaintiffs presented an appeal to the High Court on a Court-fee stamp of R10. On the 18th January 1892, the High Court held that the memorandum of appeal was insufficiently stamped, being chargeable with an *ad valorem* stamp on the value of the plaintiffs' share. On the 16th February 1892, plaintiffs applied for leave to appeal *in formâ pauperis.* This application was granted *ex-parte.* At the hearing of the appeal, however, the respondent contended that the pauper appeal was time-barred. *Held* that the application for leave to appeal *in formâ pauperis,* having been presented beyond th[illegible]
ation A[illegible]
The pa[illegible]
with. [illegible]
plication to the present case. MAHADEV BALVANT *v* LAKSHMAN BALVANT . I. L. R., 19 Bom., 48

——— arts 171, 171A, and 171B

See ABATEMENT OF SUIT—APPEALS.
[I. L. R., 7 All., 693, 734

See ABATEMENT OF SUIT—SUITS.
[I. L. R., 5 Calc., 139 : 4 C. L. R., 874

1. ——— art. 171—*Death of appellant—Civil Procedure Code, 1877, ss 365 and 587—Ap-*[illegible]

[illegible] became law. Pending the hearing of such [illegible]

[illegible]

vided, the Court ought not to interpret that language so as to include cases not falling within the strict meaning of the words used. IN THE MATTER OF RAM SUNKER BHADOORY . 3 C. L. R., 440

2. ——— *Abatement of suit—Death of sole plaintiff after decree—Civil Procedure Code, 1877, ss. 365, 372*—A sole plaintiff having died after decree, an application was made more than sixty days after his death by his legal representative for an order that his name might be substituted [illegible]

[illegible]

LIMITATION ACT, 1877—*continued.*

[illegible] ination [illegible] on was [illegible] *Held* [illegible] of the [illegible] 1879, s. 61) does not apply to the case of a sole plaintiff dying after decree, the right to sue being merged in the decree. CALLY CHURN MULLICK *v.* BHUGGOBUTTY CHURN MULLICK . . 5 C. L. R., 108

3. ——— *Death of plaintiff and substitution of his representatives as party to suit.*—If a plaintiff dies after decree, his representatives are not bound to apply within sixty days to be made [illegible]

[illegible]

4 ——— *Civil Procedure Code, 1877, ss. 363, 365—Abatement of execution proceedings—Representative*—The provision of the Limitation Act (XV of 1877), sch. II, art. 171, which gives a period of sixty days to a person claiming to be the legal representative of a deceased plaintiff under s. 363 or 365 of the Code of Civil Procedure, does not [illegible]

[illegible]

5. ——— and art. 171B—*Act XII of 1879, ss. 60 and 108—Deceased defendant—Application to make legal representative defendant.*—Subsequently to the institution of the plaintiffs' suit, one of the defendants died, and his son, as his legal representative, was made a defendant in his stead. The new defendant objected (*inter alia*) that his father had been dead more than six months before the application of the plaintiffs to make him a defendant, and that therefore the suit should abate as provided by the last clause of s. 368 of the Civil Procedure Code, Act X of 1877 (introduced by the amending Act XII of 1879), and art. 171B of the Limitation Act XV of 1877, which prescribes a period of sixty days within which an application should be made to have the representative [illegible] suit.

[illegible]

KHUSALBHAI *v.* KABHAI . I. L. R., [illegible] 93

6. ——— *Civil Procedure Code (Act XIV of 1882), ss. 3, 368, 582—Respondent, Death of—Practice—Substitution of parties.*—Having

LIMITATION ACT, 1877—*continued.*

regard to s. 3 of Act XIV of 1882, it is clear that the word "Code" in sch II, art 171B, of Act XV of 1877 applies to the present Code of Civil Procedure, Act XIV of 1882, and that therefore the word "defendant" in s. 368 of that Code when read with s. 582, must be held to include "respondent" IN THE MATTER OF THE PETITION OF SOSHI BHUSAN CHAND. SOSHI BHUSAN CHAND v. GRISH CHUNDER TALUKHDAR . . . . . I. L. R., 11 Calc., 694

7. ———— and arts 171A, 171B—*Civil Procedure Code (Act XIV of 1882), s 582—Respondent, Decease of, after appeal filed—Defendant.*—*Held* by the Full Bench the word "defendant" in art. 171B of the Limitation Act does not include a respondent. S. 582 of Act XIV of 1882 affects only proceedings under the Code, and does not extend the operation of any portion of the Limitation Act. UDIT NARAIN SINGH v. HARGOOURI PROSAD [I. L. R., 12 Calc., 590

8. ———— and art. 171B—*Application to sue in formâ pauperis—Death of opponent. Substitution of heirs—Subsequent granting of appli-*

Art. 171B applies to applications made under s.

the suit. JANARDAN VITHAL v. ANANT MAHADEV [I. L. R., 7 Bom., 378

9. ———— *Appeal, Abatement of—*

LIMITATION ACT, 1877—*continued.*

the decision of the Full Bench, distinguished. RAMESHAR SINGH v. BISHESHAR SINGH [I. L. R., 7 All., 734

10. ———— and art. 171B—*Per*

Limitation Act, 1871. LAKSHMI v. SRI DEVI [I. L. R., 9 Mad., 1

11. ———— *Civil Procedure Code (XIV of 1882), ss. 368, 582—Decease of respondent after appeal filed.*—The word "defendant" in art. 171B of sch. II of the Limitation Act (XV of 1877) does not include "respondent." BALKRISHNA GOPAL v. BAL JOSHI SADASHIV JOSHI [I. L. R, 10 Bom., 663

representative of a deceased defendant-respondent made a respondent. BALDEO v. BISMILLAH BEGAM [I. L. R, 9 All., 118

respondent. *Narain Dass* v. *Lajja Ram, I. L. R, 7 All, 693,* and *Balkrishna Gopal* v. *Bal Joshi, Sadashib* v *Joshi, I. L. R., 10 Bom., 663,* referred to. *Baldeo* v. *Bismillah Begam, I. L. R., 9 All., 118,* and *Rameshar Singh* v. *Bisheshar Singh, I. L. R, 7 All., 734,* overruled. *Held* by MAHMOOD, J., *contra,* that the word "defendant" in art. 171B includes a defendant-respondent

dent's death to have the representative of a deceased made a respondent is barred by limitation, and the appeal is liable to abatement. *Soshi Bhusan Chand* v. *Grish Chunder Taluqdar, I. L. R., 11 Calc., 694,* referred to. DEBI DIN v. CHUNNI LAL . . . . I. L. R., 10 All., 264

14. ———— and art. 178—*Death of*

LIMITATION ACT, 1877—*continued.*

plaintiff-respondent made a respondent. Art. 178 applies to such applications So *held* by the Full Bench. MAHMOOD, *J.*, dissenting. *Held* by MAHMOOD, *J.*, that by reason of s. 3 (read with ss. 368 and 582) of the Civil Procedure Code, the word "defendant" in art. 171B of the Limitation Act necessarily includes a plaintiff-respondent. *Soshi Bhusan Chand* v. *Grish Chunder Taluqdar, I. L. R., 11 Calc, 694,* referred to CHAJMAL DAS v. JAGDAMBA PRASAD . I. L. R., 10 All., 260

judgment-creditor; such representative may therefore come in at any time, as his coming in is contemplated in art 179, explanation I of sch. II of the Limitation Act, subject always to the same conditions as would apply to his principal. GOLABDAS v. LAKSHMAN NARHAR . . . I. L. R., 3 Bom., 221

——— art. 173 (1871, art. 164).

1.——— *Mofussil Small Cause Courts Act, XI of 1865, s. 21—New trial—Review.*—Where the circumstances of a case in a mofussil Small Cause Court admit a new trial, an application for such new trial is governed by s. 21 of Act XI of 1865, which is still in force notwithstanding the right of review given by s 623 of the Civil Procedure Code. But where the circumstances of a case do not admit of a new trial, but do admit of a review, then the time within which an application for review should be made is to be governed by art. 173, sch. II of Act XV of 1877. MADON MOHON PODDAR v. PURNO CHANDRA PURBOT

[I. L. R., 10 Calc., 297

2. ——— *Amendment of decree by* [illegible]

such order. BULOBHUDDUR MAHANTEE v. MUDHOOSOODUN PANDEY . . . 23 W. R., 433

——— art. 175.

See DECREE—ALTERATION OR AMENDMENT OF DECREE

[I. L. R., 14 Calc., 348

See LIMITATION ACT, 1877, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATES . I. L. R., 14 Calc., 348

LIMITATION ACT, 1877—*continued.*

——— art. 175A.

See ABATEMENT OF SUIT—APPEALS.

[I. L. R., 23 Mad., 125

——— art. 175C.

See ABATEMENT OF SUIT—APPEALS.

[I. L. R., 11 All., 408

See PARTIES—SUBSTITUTION OF PARTIES—RESPONDENT.

[I. L. R., 11 All., 408

——— and art. 178—*Substitution of the heirs of deceased defendant—Civil Procedure Code, 1882, ss. 368, 372—Substitution of parties.*—After the institution of a suit for dissolution of a partnership, two of the defendants died. More than a year after their death, the plaintiffs applied to have the legal representatives of the deceased entered on the record. The Subordinate Judge granted this application, holding that the case was governed by s 372 of the Code of Civil Procedure (Act XIV of 1882), and that the application was therefore within time under art. 178 of the Limitation Act (XV of 1877). *Held* that the case was governed by s. 368, and not s. 372, of the Civil Procedure Co[illegible] the heirs of [illegible] been made [illegible] art. 175C of the Limitation Act and was barred unless the delay was sufficiently explained. JAMNADAS CHHABILDAS v. SORABJI KHARSEDJI

[I. L. R., 16 Bom., 37

——— art. 176 (1871, art. 165)—*Application—Filing award by arbitrators—Civil Procedure Code, 1877, s. 516.*—The act of an arbitrator, in handing in an award to the proper officer of the Court [illegible] cannot be [illegible] meaning of [illegible] R., 203

1. ——— art. 177—*Civil Procedure Code, s. 598—Application for certificate for appeal to Privy Council.*—In computing the period of limitation for an application for a certificate admitting an appeal to Her Majesty in Council, the time occupied in obtaining copies of the decree and judgment sought to be appealed against cannot be excluded, s. 12 not being applicable. ANDERSON v. PERIASAMI

[I. L. R., 15 Mad., 169

2 ——— *Civil Procedure Code, s. 599—General Clauses Act (I of 1868), s. 3, cl. (1)—Civil Procedure Code Amendment Act (VII of 1888), s. 57—Application for leave to appeal to Her Majesty in Council*—S. 599 of Act [illegible] with art. 177 of [illegible] unction [illegible] of that [illegible] nitation [illegible] therefore for an application for leave [illegible] appeal to Her Majesty in Council is six months from the date of the decree to appeal from which leave is sought. The provisions of the second paragraph of s 5 of Act XV of 1877 do not extend to applications for

LIMITATION ACT, 1877—*continued.*

leave to appeal to Her Majesty in Council. *Fazal-un-nissa begam* v *Mulo, I. L. R., 6 All., 250, Burtere* v *Bhagana, I. L. R., 10 Calc., 557: L. R., 11 I. A., 7, Lakshmi* v. *Ananta Shanbaga, I. L. R., 2 Mad., 230,* and *Ganga Gir* v. *Bulwant Gir, Weekly Notes, All., 1881, p. 130,* referred to. IN THE MATTER OF THE PETITION OF SITA RAM KESHO [I. L. R., 15 All., 14

3. —————— *Civil Procedure Code (1882), ss. 596, 598, and 599—Limitation Act (XV* [illegible]

[illegible] Court of Wards was a party. Having attained his [illegible]

4. —————— and s. 12—*Application for leave to appeal to Privy Council—Time requi-* [illegible]

[illegible] requisite for obtaining a copy of the judgment on which the decree against which leave to appeal is sought is founded, cannot be excluded under the provisions of s. 12 of Act XV of 1877. JAWAHIR LAL *v.* NARAIN DAS I. L. R., 1 All., 644

5. —————— *Application for leave to appeal to Privy Council—Time for presentation of application—Limitation Act (XV of 1877), ss. 5 and 12—Civil Procedure Code (1882), s. 598.*—An application for leave to appeal to the Privy Council must be made within six months from the date of decree. Such an application is not an appeal, and in computing the period of limitation the time required for obtaining a copy of the decree cannot be excluded. MOROBA RAMCHANDRA *v.* GHANASHAM NILKANT NADKARNI I. L. R., 19 Bom., 301

—————— art. 178.

Applications to enforce a "summary decision" were provided for in s. 22 of Act XIV of 1859, and this was continued in art. 166 of Act IX of 1871, the period of limitation being one year. The provision was omitted in the present Act, but this article (178) including "applications for which no period of limitation is provided elsewhere in the [illegible] nerly [illegible] 166 [illegible] pro- [illegible] come under art 178.

1. —————— *Act XIV of 1859, s 22—* [illegible] "summary decision." [illegible] cision of [illegible] regular [illegible] of 1859, [illegible]

LIMITATION ACT, 1877—*continued.*

the period for enforcement of such decision was one year from the time it was passed. RAMDHAN MANDAL *v.* RAMESWAR BHATTACHARJEE [2 B. L. R., A. C., 235: 11 W. R., 117

2. —————— *Act XIV of 1859, s 22—Decree under Act XIX of 1841—Summary order.*—A decree passed under Act XIX of 1841 on a claim to a certain share of property by right of succession was a summary order, and therefore subject to the limitation of one year provided by s. 22, Act XIV of 1859. MAZEDOONISSA BEEBEE *v.* FUZZUN BEEBEE [4 W. R., Mis., 6

3. —————— *Summary decision under Beng. Reg VII of 1799.*—To a process of execution to enforce a summary decision of the revenue authorities under Regulation VII of 1799, Act XIV of 1859 is held applicable; and no proceeding in execution having been taken out to enforce such decision or to keep the same in force within one year next preceding the application for such execution, it was held barred by limitation. LUCHMEE KANT GHOSE *v.* RAMUN DASS MOOKERJEE . 17 W. R., 472

4. —————— *Act XIV of 1859, s 22—* [illegible]

5. —————— *Act XIV of 1859, s. 22—Summary decision.*—An order awarding possession under s. 15, Act XIV of 1859, was a summary award to which the provisions of s. 22 were applicable. A summary decision is not a final one on the matter at issue between the parties. IN THE MATTER OF NUBOO KISHEN MOOKERJEE . 11 W. R., 188

6. —————— *Act XIV of 1859, s 22—Order for costs in execution of decree.*—An order for costs made as a contested matter in execution of a decree was not a "summary decision or award" within s 22, Act XIV of 1859, but an "order" under s 20. *Puresh Narain Roy* v. *Dalrymple, 9 W. R., 458,* followed. MOHAN LALL SUKUL *v.* ULFUTUNNISA [5 B. L. R., 164 note: 11 W. R., 98

7. —————— *Act XIV of 1859, s. 22—Order dismissing application for execution.*—An order of a Court dismissing an application for execution of a decree, on the ground that it was barred by the Law of Limitation, was not a "summary decision" within the meaning of s. 22. It was an order within the meaning of s 20 of that Act. DHIRAJ MAHTAB CHAND BAHADOOR *v.* BACHARAM HAZRA [5 B. L. R., 162: 13 W. R., F. B., 74

8. —————— *Act XIV of 1859, s. 22—Summary order.*—A judgment-creditor having in execution taken possession of lands in excess of his [illegible] instituted in [illegible] of the judg- [illegible] the excess [illegible] that this

LIMITATION ACT, 1877—*continued.*

order was not a summary one within the meaning of s. 22, and that an application for its execution was governed by the three years' limitation. ROOP MUNGUL SINGH v. CHOORAMUN SINGH

[16 W. R., 182

9. ———— *Act XIV of 1858, s. 22—Decree under Registration Act, 1866, s. 53.—Quære*—Whether a decree passed under s. 53 of the Regis- [illegible] within [illegible] [illegible]RNATH

[illegible] W. R., 512

10. ———— *Act IX of 1871, art. 166—Application for execution of decree—Registration Act, 1866, s. 53.*—An application for the execution of a decree made under s. 53 of Act XX of 1866 fell within art 166, and not within art. 167, sch. II of Act IX of 1871. *Jai Shankar v. Tetley, I. L. R., 1 All., 586,* dissented from. A proceeding under s. 53 of Act XX of 1866, though in the [illegible]

[illegible] under s. 53 of Act XX of 1866, on a bond specially registered under s. 52 of that Act. He applied for the execution of it,—first on the 2nd [illegible]

[illegible]

See contra, JAI SHANKAR v. TETLEY

[I. L. R., 1 All., 586

11. ———— *Act XIV of 1859, s. 22* [illegible]

[illegible]

1859, s. 22 MINA KONWARI v. JUGGAT SETANI

[I. L. R., 10 Calc., 196: 13 C. L. R., 385
L. R., 10 I. A., 119

[illegible]

LIMITATION ACT, 1877—*continued.*

the award were subsequently made and granted. The last application was made in 1880, and was rejected on the ground that there was no decree to execute. The order was confirmed by the High Court on appeal. The applicants then applied to the lower Court to pass judgment in terms of the award. The Court rejected the application as barred under the Limitation Act, XV of 1877, sch. II, art. 178. The applicants appealed. *Held* by SARGENT, C.J., and KEMBALL, J., that, looking to the provisions of the Codes of Civil Procedure of 1859 and 1877 with respect to the filing of awards in Court and the pro- [illegible] the duty of the [illegible] to pass judgment [illegible] was ordered to be filed, without waiting for any application that should be done, though such application was, as a [illegible] and that being so, such an [illegible] authority of [illegible], *I. L. R., 4* [illegible] *v. Vithojirav Putlajirav, I. L. R., 6 Bom., 586,* was not within the contemplation of the Limitation Act. *Held* further that the same effect should be given to the language of s. 327 of Act VIII of 1859 and s 526 of Act X of 1877. The expression "may be enforced" in the concluding part of s. 327 ought to be read as "shall be enforced" as far as it applies to the Court, [illegible] of the decree [illegible] ards the [illegible] BAI [illegible]

[I. L. [illegible] m., 316

13. ———— *Application for certificate to collect debts of deceased person.*—Art. 178 of sch. II of the Limitation Act, 1877, does not affect an application under Act XXVII of 1860 for a certificate to collect debts due to the estate of a deceased person. JANAKI v. KESAVALU

[I. L. R., 8 Mad., 207

14. ———— *Application for probate.*—The Limitation Act is not applicable to an application for probate; such an application therefore is not barred by art. 178 of sch. II of that Act. IN THE MATTER OF THE PETITION OF ISHAN CHUNDER ROY I. L. R., 6 Calc., 707: 8 C. L. R., 52

15. ———— *Application for probate or letters or certificate of administration.*—Art. 178 of sch. II of Act XV of 1877 has reference only to applications under the Civil Procedure Code (Act X of 1877), and does not apply to applications for probate or letters or certificates of administration BAI MANEKBAI v. MANEKJI KAVASJI

[I. L. R., 7 Bom., 213

16. ———— *Applications for probate or letters or certificates of administration.*—Applications for probate or letters or certificates of administration do not fall within the provisions of art. 178 of the Limitation Act KASHI CHUNDRA DEB v. GOPI KRISHNA DEB I. L. R., 19 Calc., 48

17. ———— *Applications for probate.*—The Limitation Act does not apply to applications for probate, and the applications referred to in art. 178 of sch. II of that Act are applications

LIMITATION ACT, 1877—*continued.*

under the Code of Civil Procedure *Janaki v. Kesavalu, I. L. R., 8 Mad., 207; Bai Manekbai v. Manekji Kavasji, I. L. R., 7 Bom., 213*, and *In the matter of the petition of Ishan Chunder Roy, I. L. R., 6 Calc., 707*, followed. GNANAMUTHU UPADESI *v.* VANA KOILPILLAI NADAN

[I. L. R., 17 Mad., 379

18. ——————— *Application for certificate of sale—Civil Procedure Code, 1859, s. 259.*—The provisions of the Limitation Act relating to applications do not extend to an application by a purchaser of land at a Court-sale under a decree to obtain a certificate. KYLASA GOUNDAN *v.* RAMASAMI AYYAN

[I. L. R., 4 Mad., 172

19. ——————— *Certificate of sale, Application for.*—Art. 178, sch. II of the Limitation Act (XV of 1877), is not applicable to applications for certificates of sale. The provisions of the Limitation

DEVIDAS JAGJIVAN *v.* PORJADA BEGAM

[I. L. R., 8 Bom., 377

20. ——————— *Certificate of sale, Application for.*—Where an application for a certificate of sale was made five years and a half after the confirmation of the sale,—*Held* that it was barred by art. 178 of sch. II of Act XV of 1877. TUKARAM *v.* SATYAJI KHANDAJI. . I. L. R., 5 Bom., 206

21. ——————— *Application for a certificate of sale—Accrual of cause of action.*—The applicant purchased certain land at a Court-sale on the 17th February 1876. The sale was confirmed on the 20th March of the same year. The purchaser

22. ——————— *Civil Procedure Code (Act XIV of 1882), s. 318—Purchaser at Court-sale—Certificate of confirmation of sale—Application for possession of purchased property—Date of accrual of right to apply for possession.*—The right of a purchaser to apply for possession under s. 318 of the Civil Procedure Code (Act XIV of 1882) accrues to

23. ——————— *Application for possession after sale in execution of decree—Period from*

LIMITATION ACT, 1877—*continued.*

limitation therefore counts from the former date. BASAPA *v.* MARYA . . I. L. R., 3 Bom., 433

24. ———

guished. HANMANTRAV PANDURANG JOGLEKAR *v.* SUBAJI GIRMAJI . . I. L. R., 8 Bom., 257

25. ——————— *Insolvent judgment-debtor*

another creditor, in May 1883, applied to prove his

26. ——————— *Application to amend decree—Act X of 1877 (Civil Procedure Code),*

THE MATTER OF THE PETITION OF GAYA PRASAD *v.* SIKRI PRASAD . . . I. L. R., 4 All., 23

27. ——————— *Application to bring decree into conformity with judgment—Civil Procedure Code, 1882, s. 206.*—Applications to the Court under s. 206 of the Code of Civil Procedure are not governed by the Limitation Act. JIVRAJI *v.* PRAGJI

[I. L. R., 10 Mad., 51

28. ——————— *Decree, Application to*

29. ——————— *Civil Procedure Code, s. 206—Amendment of decree.*—Art. 178 of sch. II of the Limitation Act (XV of 1877) applies only to applications made to a Court to exercise powers which, without being moved by such application, it is not bound to exercise and not to applications made to a Court to do acts which it has no discretion to refuse to do. It does not govern an application

LIMITATION ACT, 1877—*continued.*

under s 206 of the Civil Procedure Code for amendment of a decree, so as to bring it into conformity with the judgment, it being the bounden duty of a Court, of its own motion, to see that its decrees are in accordance with the judgments, and to correct them if necessary. *Gaya Prasad v. Sikri Prasad, I. L R., 4 All., 23* dissented from. *In re petition of Kishan Singh, Weekly Notes, All., 1883, p. 262, Kylasa Goundan v. Ramasami Ayyan, I. L. R., 4 Mad., 172*, and *Vithal Janardan v. Vithojirav Putlajirav I. L R., 6 Bom. 586*, referred to
DARLO v. KESHO RAI . I. L. R., 9 All., 364

30. ——— *Amendment of decree—Civil Procedure Code, 1882, s. 206—Suit for mesne profits while plaintiff is out of possession.*—There

tuted a suit for declaration of title and for possession. The decree, which was finally confirmed by the High Court, gave her the declaration sought for, but it contained no direction as to the possession, although the judgment stated that she was entitled to posses-

ation, but on the ground that the application to amend the decree had been made in the wrong Court. *A's* son then instituted a fresh suit against the same parties for declaration of title, perpetual injunction, and for mesne profits. *Held* that the plaintiff was entitled to have the decree amended under s. 206,

31. ——— *Decree as originally framed incapable of execution—Amendment of decree—Application for execution of amended decree.*—

32. ——— *Application for order*

Property Act, 1882. *Bai Manekbai v. Manekji Kavasji, I. L R, 7 Bom, 213*, approved. RANBIR SINGH v. DRIGPAL . I. L. R., 16 All., 23

LIMITATION ACT, 1877—*continued.*

Contra, CHUNNI LAL v HARNAM DASS
I. L. R., 20 All., 302

33. ——— *Transfer of Property Act (IV of 1882), s. 89—Application for an order absolute for sale of mortgaged property.*—An application under s. 89 of the Transfer of Property Act (IV of 1882) to have a mortgage-decree for sale made absolute is not governed by art. 178, sch. II of the

rules applied in such cases by Courts of equity. So long as the final order for sale is not passed, the suit may properly be regarded as pending. TILUCK SINGH v. PARSOTEIN PROSHAD . I. L. R., 22 Calc., 924

34. ——— *Application for a decree under s 90—Transfer of Property Act (IV of 1882)*—*Held* that the limitation governing an application for a decree under s. 90 of the Transfer of Property Act is that prescribed by art. 178 of the second schedule to the Limitation Act, 1877. RAM SARUP v. GHAURANI . I. L. R., 21 All., 453

35. ——— *execution*
Upon an
1891, for execution of a mortgage decree
gaged property was sold, and the judgment-debtors purchased it benami at a low price. Thereupon the decree-holders made an application, on the 12th November 1891, asking the Court to set aside the benami purchase and resell the property. The first Court found that the purchase was not benami, and confirmed the sale on the 12th April 1892, but the lower Appellate Court came to a contrary conclusion, and set aside the sale on the 22nd July

ground of limitation *Held* that the app
the 3rd December 1894 might be regarded as a continuation of the application of the 12th November 1891, for resale of the property, and as the decree-holders were precluded by the first Court's finding of the 12th April 1892, from asking for sale until it was reversed by the lower Appellate Court on the 22nd July 1892, and finally by the High Court on the 4th August 1893, the application was in time under art 178, sch. II, Act XV of 1877. *Pyaroo Tuhoeldarinee v Nazir Hossein, 23 W. R., 153; Chandra*
R., 14 Calc.,
All., 355;
Jadu-
Chintamon

LIMITATION ACT, 1877—*continued.*

Damodar Agashe v. *Balshastri, I. L. R., 16 Bom., 294,* referred to. RAGHUNATH SAHAY SINGH v. LALJI SINGH . I. L. R., 23 Calc., 397

36. ———— *Renewal of application for execution after intermediate proceedings*—Certain holders of a decree for sale under s 88 of the Transfer of Property Act applied for execution of their decree on the 6th of January 1887, and the application was granted A third party, however, appeared and filed an objection under s. 278 of the Code of Civil Procedure, which was allowed. Thereupon the decree-holders brought a suit under s 283 of the Code. They obtained a decree on the 5th of June 1888, but the intervenor appealed, and the

[illegible]

of the second schedule to Act XV of 1877 DESRAJ SINGH v KARAM KHAN . I. L. R., 19 All., 71

37. ———— *Application to set aside a sale by a person interested in the sale—Bengal Tenancy Act (VIII of 1885), s. 173—Limitation Act, art. 166.*—An application to set aside a sale under s 173 of the Bengal Tenancy Act is governed by art. 178, sch. II of the Limitation Act, and should be made within three years from the date when the right to apply accrues. CHAND MONEE DASYA v. SANTO MONEE DASYA . I. L. R., 24 Calc., 707 [1 C. W. N., 534

38. ———— *Application to set aside*

[illegible]

See MOTI LAL CHAKRABUTTY v RUSSICK CHANDRA BARRAJI I. L. R., 26 Calc., 326 note

which places such an application under art. 95 of the Limitation Act

39. ———— Where a judgment-debtor

[illegible]

provided in art 178, and not that in art 166, of sch. II of the Limitation Act. NEMAI CHAND KANJI v. DENO NATH KANJI . 2 C. W. N., 691

LUCHMIPAT v MANDIL KOER 3 C. W. N., 333

40. ———— *Limitation Act, 1877, s 8—Mesne profits, Decree for—Execution of decree—Application for assessment of mesne profits—Joint decree-holders—Minor Right of, to execute whole decree when remedy of major joint-decree-holder is barred.*—In execution of a decree for possession of certain lands and for mesne profits, dated the 1.th August 1878, possession having been obtained in August 1880, two decree-holders, one of whom was a minor, applied on the 4th April 1882 for ascertainment of the amount of such mesne profits. Upon that application the amin was directed to ascertain the amount due, but after repeated reminders had been sent him, and no report being submitted, the

[illegible]

decree having been in that respect merely interlocutory. *Baroda Sundari Dabia* v. *Fergusson, 11 C. L. R., 17,* and *Dildar Hosain* v. *Mujeedunnissa, I L. R, 4 Calc, 529,* followed *Hem Chunder Chowdhry* v. *Brojo Soondury Debee, I L. R, 8 Calc, 89,* dissented from *Held* also that the provisions of art 178 of sch. II of the Limitation Act apply to an application by a decree-holder to make a decree complete (*Baroda Soondari Dabia* v. *Fergusson, 11 C. L. R., 17,* upon this point dissented

[illegible]

the remedy of the minor decree holder was not barred, as the other decree-holder could not give a valid discharge without his concurrence (*Ahamuddin* v *Grish Chunder Chamunt, I. L. R, 4 Calc, 350,* distinguished), and that, under s. 231 of the Code of Civil Procedure, he was entitled to execute the whole decree, as, though the remedy of the major decree-holder was barred, his right was not extinguished ANANDO KISHORE DASS BAKSHI v. ANANDO KISHORE BOSE . I. L. R., 14 Calc, 50

41. ———— and art. 179—*Applica-*

[illegible]

cedure. PURAN CHAND v. ROY RADHA KISHEN [I. L. R., 19 Calc, 132

PRYAG SINGH v. RAJU SINGH [I. L. R., 25 Calc, 203

42. ———— *Decree for possession and* [illegible] *execution*— [illegible] here a decree [illegible] profits from [illegible] the amount to be fixed in execution,—*Held* that the decree was necessarily subject to the limitation laid down in s 211 of the Civil Procedure Code (Act XIV of 1882), and that mesne profits for more than three years from the date of the decree should not be awarded, even though possession was not delivered during that

LIMITATION ACT, 1877—*continued.*

period. NARAYAN GOVIND MANIK *v.* SONO SADASHIV . . . . I. L. R., 24 Bom., 345

43. ——— and art. 179—*Application for recovery of whole amount of decree under agreement—Civil Procedure Code, s. 257A.*—On the 27th August 1878 the holder of a decree for money and the judgment-debtor agreed that the amount of the decree should be payable by instalments, and

and the period of limitation began to run from the date of default. The principle recognized in Ra-

v. PIARI

44. ——— *Plaint in a suit treated as an application under s. 244, Civil Procedure Code, 1882.*—Where a suit is filed under circumstances

limitation applicable will be that appropriate to

LALMAN DAS *v.* JAGAN NATH SINGH [I. L. R., 22 All., 376

45. ——— *Decree prohibiting execution till the expiration of a certain period.*—A decree, which was passed on the 8th December

SHADI LAL . . . I. L. R., 8 All., 56

46. ——— *Decree for possession of immoveable property, execution being contingent on non-payment of annuity.*—Where a decree was for possession of immoveable property, but its execution was contingent on default being made by the judgment-debtor in the payment year by year of a certain annuity to the decree-holder,—

LIMITATION ACT, 1877—*continued.*

Held that the decree-holder was not obliged to execute such decree once and for all upon the occurrence of the first default, but might execute it on occasion of any subsequent default; also that the limitation applicable to the execution of such decree was that provided for by art. 178 of sch. II of the Limitation Act, 1877. *Thakar Das* v. *Shadi Lal, I. L. R., 8 All., 56,* referred to. MUHAMMAD ISLAM *v.* MUHAMMAD AHSAN [I. L. R., 16 All., 237

47. ——— *Application for execution of decree.*—An application for execution of a decree, made on the 29th May 1874, having been rejected, an appeal was preferred to the High Court, which reversed the order of the lower Court. The property

that the attachment had ever been withdrawn on the 31st December 1877, the judgment-creditor ap-

Bench decision in *Chunder Coomer Roy* v. *Bhogobutty Prosunno Roy, 1 C. L. R., 23. I. L. R.,* ; that the right to apply to have the ment, and inasmuch as from the limitation under art. 178, sch. II of Act XV of *1877.* JOOBRAJ SINGH *v.* BUHOORIA ALUMBASEE KOER [7 C. L. R., 424

48. ——— *Application for execution—Intermediate suit—Fresh application—Revival of application.*—On the 27th March 1878, the holder of a decree applied for execution. On the 27th May 1878, the Court made an order directing that the application should be struck off, as the record of the former execution proceedings was in the Appellate Court, and that the decree-holder should make a fresh application when such record was returned. On the 28th May 1881 the decree-holder renewed the application in accordance with such order. *Held*, on the question whether this application was barred by limitation, that it was not an application within the meaning of art. 179, sch. II of Act XV of 1877, but one to which art. 178 would apply; that limitation ng elapsed ation was anasham*lal Jadunathji, I. L. R., 5 Bom., 29,* and *Paras Ram* v. *Gardner, I. L. R., 1 All., 355,* referred to. RAGHUBANS GIR *v.* SHEOSARAN GIR [I. L. R., 5 All., 243

LIMITATION ACT, 1877—*continued.*

49. ——————— *Application for revival of execution stayed by injunction.*—A decree was made against *B*, *K*, and *Z*. On the 13th May 1879, ap-

Gir v. *Sheosaran Gir*, *I. L. R.*, *5 All.*, 243, and *Kalyanbhai Dipchand* v. *Ghanashamlal Jadunathji I. L. R.*, *5 Bom.*, *29*, followed. BUTI BEGAM *v.* NIHAL CHAND . . I. L. R., 5 All., 459

certain property was attached and proclaimed for sale On the day fixed for the sale the Court issued an injunction to stay the same until a suit, which certain persons who claimed the property had instituted, had been decided On the 14th September

51. ——————— *Decree — Execution — Attachment set aside—Time occupied in suing to declare property liable to attachment.*— An appli-

distinguished. NARAYANA *v.* PAPPI BRAHMANI [I. L. R., 10 Mad., 22

52. ——————— *Application under s. 411, Civil Procedure Code, 1877—Court-fees payable to Government under decree*—Government is not entitled to any exemption from the provisions of the Limitation Act, 1877, relating to applications *Held* therefore that an application by Government under s. 411 of the Code of Civil Procedure to recover the amount of Court-fees from a party ordered by the decree to pay the same was subject to the provisions of art 178 of the Limitation Act, 1877. APPAYA *v.* COLLECTOR OF VIZAGAPATAM [I. L. R., 4 Mad., 155

53. ——————— *Application for refund of*

[I. L. R., 7 All., 371

54. ——————— *Application under Civil Procedure Code, s. 583—Application for refund of moneys levied under decree reversed on appeal.*—

DAR *v* SADASIVA . . I. L. R., 10 Mad., 66
HARISH CHANDRA SHAHA *v.* CHANDRA MOHAN DASS . . I. L. R., 23 Calc., 109

Contra NANDRAM *v.* SITARAM [I. L. R., 8 All., 545

55. ——————— *Civil Procedure Code, s 315—Sale in execution set aside—Application by purchaser for refund of purchase-money—Accrual of right to apply—Delay—Costs.*—A suit

purchaser at the sale applied, under s 315 of the Civil Procedure Code, for a refund of the purchase-money. *Held* that the limitation applicable was that provided by art. 178 of sch. II of the Limitation Act (XV of 1877), that the right to apply accrued on the passing of the High Court's decree, and the application was therefore not barred by

56. ——————— *Application to revive a case and restore it to the board.*—After a decree had been made in a suit, the case was in 1875 struck out of the board for want of prosecution No steps were taken to have it restored. In 1879 both the plaintiff and defendant died In the same year the heirs of the plaintiff instituted a suit against the

LIMITATION ACT, 1877—*continued.*

period. NARAYAN GOVIND MANIK *v.* SONO SADASHIV . . . . I. L. R., 24 Bom., 345

43. ———— and art. 179—*Application for recovery of whole amount of decree under agreement—Civil Procedure Code, s. 257A.*—On the

the Limitation Act, 1877, was applicable, but art. 178, and the period of limitation began to run from the date of default. The principle recognized in *Raghubans Gir v. Sheosaran Gir, I. L. R., 5 All., 243,* and *Kalyanbhai Dipchand v. Ghanashamlal Jadunathji, I. L. R., 5 Bom., 29,* applied. SHAM KARAN *v.* PIARI . . . . I. L. R., 5 All., 596

44. ———— *Plaint in a suit treated as an application under s. 244, Civil Procedure Code, 1882.*—Where a suit is filed under circumstances

1877. *Jhamman Lal v. Kewal Ram, Weekly Notes, All., 1899, p 219,* and *Biru Mahata v. Shyama Churn Khawas, I. L. R., 22 Calc., 483,* referred to. LALMAN DAS *v.* JAGAN NATH SINGH

[I. L. R., 22 All., 376

45. ———— *Decree prohibiting execution till the expiration of a certain period.*—A decree, which was passed on the 8th December 1881, in a suit on a simple mortgage-bond contained the following provision. "If the judgment-debt is not paid within four months, the decree-holder shall have the power to recover it by a sale of the mortgaged property" On the 17th February 1885, the decree-holder applied for execution of the decree.

SHADI LAL . . . . I. L. R., 8 All., 56

46. ———— *Decree for possession of immoveable property, execution being contingent on non-payment of annuity.*—Where a decree was for possession of immoveable property, but its execution was contingent on default being made by the judgment-debtor in the payment year by year of a certain annuity to the decree-holder,—

LIMITATION ACT, 1877—*continued.*

Held that the decree-holder was not obliged to execute such decree once and for all upon the occurrence of the first default, but might execute it on occasion of any subsequent default; also that the limitation applicable to the execution of such decree was that provided for by art. 178 of sch. II of the Limitation Act, 1877. *Thakar Das v. Shadi Lal, I. L. R., 8 All., 56,* referred to. MUHAMMAD ISLAM *v.* MUHAMMAD AHSAN

[I. L. R., 16 All., 237

47. ———— *Application for execution*

that the attachment had ever been withdrawn on the 31st December 1877, the judgment-creditor ap-

Bench decision in *Chunder Coomer Roy v. Bhogobutty Prosunno Roy, 1 C. L. R., 23 I. L. R., 3 Calc., 235*); that the right to apply to have the property sold accrued upon the attachment, and accordingly that the present application, inasmuch as it had been made more than three years from the date of the attachment, was barred by limitation under art. 178, sch. II of Act XV of 1877. JOOBRAJ SINGH *v.* BUHOOBIA ALUMBASEE KOER

[7 C. L. R., 424

plication should be struck off, as the record of the former execution proceedings was in the Appellate Court, and that the decree-holder should make a fresh application when such record was returned On the 28th May 1881 the decree-holder renewed the application in accordance with such order. *Held,* on the question whether this application was barred by limitation, that it was not an application within the meaning of art. 179, sch. II of Act XV of 1877, but one to which art. 178 would apply; that limitation began to run when the record was returned, and that therefore (three years not having elapsed from that time) the application in question was within time. *Kalyanbhai Dipchand v. Ghanashamlal Jadunathji, I. L. R., 5 Bom., 29,* and *Paras Ram v. Gardner, I. L. R., 1 All., 355,* referred to. RAGHUBANS GIR *v.* SHEOSARAN GIR

[I. L. R., 5 All., 243

LIMITATION ACT, 1877—*continued.*

Gir v. Sheosaran Gir, I. L. R., 5 All., 243, and *Kalyanbhai Dipchand v. Ghanashamlal Jadunathji I. L. R., 5 Bom., 29,* followed. BUTI BEGAM *v.* NIHAL CHAND . I. L. R., 5 All., 459

certain property was attached and proclaimed for sale On the day fixed for the sale the Court issued an injunction to stay the same until a suit, which certain persons who claimed the property had insti-

51. ——— *Decree — Execution — Attachment set aside—Time occupied in suing to declare property liable to attachment* — An application for execution of a decree having been made

proceedings, that art. 178 was not applicable to it,

LIMITATION ACT, 1877—*continued.*

Limitation Act, 1877, relating to applications. *Held* therefore that an application by Government under s 411 of the Code of Civil Procedure to recover the amount of Court-fees from a party ordered by the decree to pay the same was subject to the provisions of art. 178 of the Limitation Act, 1877. APPAYA *v.* COLLECTOR OF VIZAGAPATAM [I. L. R., 4 Mad., 155

53. ——— *Application for refund of excess payment—Accrual of right to apply* —The

[I. L. R., 7 All., 371

54. ——— *Application under Civil Procedure Code, s. 583—Application for refund of moneys levied under decree reversed on appeal.— Semble* —An application for refund of moneys levied in execution of a decree subsequently reversed on appeal is not governed by art. 179, but by art. 178, of sch II of the Limitation Act. KURUPAM ZAMINDAR *v.* SADASIVA . . I. L. R., 10 Mad., 66

HARISH CHANDRA SHAHA *v.* CHANDRA MOHAN DASS . . . . I. L. R., 23 Calc., 109

Contra NANDRAM *v.* SITARAM [I. L. R., 8 All., 545

55. ——— *Civil Procedure Code, s. 315—Sale in execution set aside—Application by purchaser for refund of purchase-money— Accrual of right to apply—Delay—Costs.*—A suit

ation Act (XV of 1877); that the right to apply accrued on the passing of the High Court's decree, and the application was therefore not barred by

56. ——— *Application to revive a case and restore it to the board.*—After a decree had been made in a suit, the case was in 1875 struck out of the board for want of prosecution No steps were taken to have it restored In 1879 both the plaintiff and defendant died. In the same year the heirs of the plaintiff instituted a suit against the

LIMITATION ACT, 1877—*continued.*

period. NARAYAN GOVIND MANIK *v.* SONO SADASHIV . . . . I. L. R., 24 Bom., 345

43. ——————— and art. 179—*Application for recovery of whole amount of decree under agreement—Civil Procedure Code, s. 257A.*—On the 27th August 1878 the holder of a decree for money and the judgment-debtor agreed that the amount of the decree should be payable by instalments, and

made, the decree-holder applied for recovery of the whole amount of the decree. *Held* that the application was not one to which art. 179, sch. II of the Limitation Act, 1877, was applicable, but art. 178, and the period of limitation began to run from the date of default. The principle recognized in *Ra-*

44. ——————— *Plaint in a suit treated as an application under s. 244, Civil Procedure Code,*

LALMAN DAS *v.* JAGAN NATH SINGH [I. L. R., 22 All., 376

45. ——————— *Decree prohibiting execution till the expiration of a certain period.*—A decree, which was passed on the 8th December

SHADI LAL . . . . I. L. R., 8 All., 56

46. ——————— *Decree for possession of immoveable property, execution being*

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the 31st December 1877, the judgment

decree or kept it in force" (as defined by the Full Bench decision in *Chunder Coomer Roy v. Bhogobutty Prosunno Roy, 1 C. L. R., 23 I. L. R.,* ... to have the ...ent, and ...smuch as ... from the date of the attachment, was barred by limitation under art. 178, sch. II of Act XV of 1877. JOOBRAJ SINGH *v.* BUHOORIA ALUMBASEE KOER [7 C. L. R., 424

48. ——————— *Application for execution—Intermediate suit—Fresh application—Revival of application.*—On the 27th March 1878, the holder of a decree applied for execution. On the 27th May 1878, the Court made an order directing that the ap... of the

meaning of art. 179, sch. II of Act XV of 1877, but one to which art. 178 would apply; that limitation ... the record was returned, ...ng elapsed ...ation was ...*anasham-* ...nd *Paras* ...ferred to.

... All., 243

LIMITATION ACT, 1877—*continued.*

49. ——— *Application for revival of execution stayed by injunction.*—A decree was made against *B*, *K*, and *Z*. On the 13th May 1879, ap-

certain property was attached and proclaimed for sale. On the day fixed for the sale the Court issued an injunction to stay the same until a suit, which certain persons who claimed the property had instituted, had been decided. On the 14th September

51. ——— *Decree — Execution — Attachment set aside—Time occupied in suing to declare property liable to attachment.*—An application for execution of a decree having been made

and that the application was barred by limitation. *Basant Lal v. Batul Bibi, I. L. R., 6 All., 23*, distinguished. NARAYANA v. PAPPI BRAHMANI

[I. L. R., 10 Mad., 22

Limitation Act, 1877, relating to applications. *Held* therefore that an application by Government under s. 411 of the Code of Civil Procedure to recover the amount of Court-fees from a party ordered by the decree to pay the same was subject to the provisions of art. 178 of the Limitation Act, 1877. APPAYA v. COLLECTOR OF VIZAGAPATAM

[I. L. R., 4 Mad., 155

53. ——— *Application for refund of excess payment—Accrual of right to apply.*—The

[I. L. R., 7 All., 371

54. ——— *Application under Civil Procedure Code, s. 583—Application for refund of moneys levied under decree reversed on appeal.*

DAR v. SADASIVA . . I. L. R., 10 Mad., 66

HARISH CHANDRA SHAHA v. CHANDRA MOHAN DASS . . I. L. R., 23 Calc., 109

Contra NANDRAM v. SITARAM

[I. L. R., 8 All., 545

55. ——— *Civil Procedure Code, s. 315—Sale in execution set aside—Application by purchaser for refund of purchase-money—Accrual of right to apply—Delay—Costs.*—A suit by a judgment-debtor whose sir land had been sold in execution of a decree to have the sale declared void and illegal, on the ground that the sir was incapable of sale, was decreed on appeal by the High Court on the 13th June 1884. On the 11th June 1887, the purchaser at the sale applied, under s. 315 of the Civil Procedure Code, for a refund of the purchase-money. *Held* that the limitation applicable was that provided by art. 178 of sch. II of the Limitation Act (XV of 1877), that the right to apply accrued on the passing of the High Court's decree, and the application was therefore not barred by

56. ——— *Application to revive a case and restore it to the board.*—After a decree had been made in a suit, the case was in 1875 struck out of the board for want of prosecution. No steps were taken to have it restored. In 1879 both the plaintiff and defendant died. In the same year the heirs of the plaintiff instituted a suit against the

LIMITATION ACT, 1877—*continued.*

administrator of the defendant for the purpose of having the decree in the original suit carried out. This suit was dismissed by the Court of first instance under s. 13 of the Code of Civil Procedure, but the Appellate Court, holding that the original suit was subsisting and might be reconstituted, directed that the plaintiffs should be allowed to amend their

Act of 1877. Even if art. 178 was applicable, the

with reference to its own list of causes, such as applications to transfer a case from one board to another, to transfer a case to the bottom of the board, change of attorneys, and so forth. GOVIND CHUNDER GHOSWAMI *v.* RUNGUNMONEY

[I. L. R., 6 Calc., 60: 6 C. L. R., 345

57. ——— and arts. 171 and 171A —*Application to revive suit—Right to apply—Pending suit.*—The right to apply in a pending suit,—*i.e.*, a suit in which no final order has been made,—is a right which accrues from day to day, and therefore the periods of limitation provided in arts. 171, 171A, and 178 do not apply in an application to revive such a suit. KEDARNATH DUTT *v.* HARA CHAND DUTT . I. L. R., 8 Calc., 420

RAMNATH BHUTTACHARJEE *v.* UMA CHARAN SIRCAR . . . . . 3 C. W. N., 756

58. ——— *Revival, Application for —Civil Procedure Code, 1877, s. 371.*—An application by the legal representative of the plaintiff to revive a suit which has abated on the death of the plaintiff may be granted if made within three years from the time when the right to apply accrued, if the applicant can show that he was prevented from sufficient cause from continuing the suit. BHOYRUB DOSS JOHURRY *v.* DOMAN THAKOOR

[I. L. R., 5 Calc., 139: 4 C. L. R., 374

59. ——— *Death of plaintiff-respondent—No application for substitution—Application by defendant-appellant for hearing of appeal*

60. ——— and art. 179—*Injunction restraining execution—Revival of proceedings by representative of decree-holder—Substitution of name of representative on the record.*—*J* obtained a decree against the firm of *M R* in 1863, and on the

LIMITATION ACT, 1877—*continued.*

16th September 1869 applied for execution by attachment and sale of certain immoveable property. The property was attached, but the sale was delayed by various causes until the 5th February 1876, when it was ordered to take place on the 18th March

order granting the injunction, which, however, was confirmed on the 26th June 1878. Meanwhile, on the 22nd January 1877, *J* had died, and thereupon the proceedings in the matter of the injunction as well as in *P*'s suit were carried on by *G* as his

of *J* in the application for execution of the 16th September 1869, and to proceed with the case; and on t

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1869.

Held t

an application for execution has been made and granted, but the right to execute has been subsequently

which the injunction or other obstacle (art. 178 of sch. II of Act XV of 1877). Where a decree-holder, whose right of execution has been thus temporarily suspended, dies, his representative has the same rights as he had himself to apply for and obtain a revival of the proceedings. It was contended in the above case that *G* had no right to apply for a revival of proceedings, ... on the record as *J*'s

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effect. *Held* that, under the circumstances of the case, *G*'s right to apply for the entry of his name in the place of that of *J* could not be regarded as having accrued immediately upon *J*'s death. At that time *J*'s application for execution, being suspended by the injunction, was to all intents and purposes non-existent. It could not be revived until the injunction was removed. During the continuance of the injunction, an application by *G* for the entry of his name could not have been entertained by the Co... for execution

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cation would not be revived in favour of ..., for

LIMITATION ACT, 1877—*continued.*

even if he were *J's* representative at the date of his application, he might be dead before the decision of *P's* suit. KALYANBHAI DIPCHAND *v.* GHANASHAMLAL . . . I. L. R., 5 Bom., 29

61. ————— *Death of sole defendant —Legal representative—Civil Procedure Code (Act X of 1877), ss. 368, 372.*—In a suit for the

tive of the deceased defendant. On the 22nd of November 1880 the Court rejected the application under the provisions of Act XV of 1877, sch. II, art. 171*b*, and ordered the suit to abate. On the same day the plaintiff applied to the Court to set aside the order directing the suit to abate, but this application was also rejected on the 20th of Septem-

v. Administrator General of Bengal, I. L. R., 5 Calc., 726, referred to. BENODE MOHINI CHOWDHRAIN *v.* SHARAT CHUNDER DEY CHOWDHRY

[I. L. R., 8 Calc., 837: 10 C. L. R., 449
12 C. L. R., 421

62. ————— *Application for fresh summons—Filing of plaint.*—A plaint was filed on 12th March 1875, and the summons to the defendant to appear and answer issued on 13th March 1875. With the exception of an application for substituted service made on 20th March 1875, and which was refused, no further steps were taken in the matter until 21st March 1878, when the plaintiff applied for a fresh summons to issue, the time for the return of the first summons having long since expired. *Held* that the mere filing of a plaint, or the naked fact that a plaint is on the file, will not of itself prevent the operation of the law of limitation, and that, as no steps had been taken to renew the summons for three years, and as no sufficient case to excuse the delay had been made out, the application was out of time, and should be refused. RAMKISSEN DOSS *v.* LUCKEYNARAIN . . . I. L. R., 3 Calc., 312

63. ————— *Application for summons after period of limitation had expired—Rules of*

64. ————— *Per curiam* (KERNAN, J., dissenting).—An application by an appellant to make the representative of a deceased respondent party to the appeal does not fall under art. 171B, but under art. 178, of sch. II of the Limitation Act, 1871. LAKSHMI *v.* SRI DEVI I. L. R., 9 Mad., 1

65. —

—Interest

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terest of purchaser under prior sale—Registered certificate of second sale—Act VIII of 1859—Civil Procedure Code (XIV of 1882), s. 294—Purchase by decree-holder at execution-sale—Right to set aside such purchase.—In 1881 the plaintiff

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January 1880, which was registered on the 13th of the same month. The defendant had previously purchased the same property at a sale held on the 22nd November 1875, in execution of a decree obtained by him as mortgagee against the said *C.* The defendant had obtained a certificate of sale and was put into possession, but had not then registered the certificate. He subsequently obtained another certificate, which was registered in June 1882. In a suit by the plaintiff for possession it was contended that, under s. 294 of the Civil Procedure

purchase set aside on this ground, had been barred by limitation long before this suit was brought. The purchase by the defendant was not void *ab initio*, but only voidable "on the application of the

1st October 1880. CHINTAMANRAV NATU *v.* VITHABAI . . . I. L. R., 11 Bom., 588

66. ————— *Execution of decree—Decree payable by instalments—Instalment, Default in payment of.*—When a decree or order makes a sum of money payable by instalments on certain dates, and provides that, in default of payment of any instalment, the whole of the money shall become due and payable and be recoverable in execution, by art. 178, sch. II of the Limitation Act, limitation begins to run from the date of the first default, unless the right to enforce payment in default has been waived by subsequent payment of the overdue instalment on the one hand and receipt on the other. *R* obtained a decree against *D C* and *K G* for a sum of money on 21st June 1880. On 25th May 1882 an order was made in terms of the petition of both parties, providing

LIMITATION ACT, 1877—*continued.*

that the amount of the decree should be paid by five instalments, the first instalment being due in July 1882, and that in default of payment of any instalment the whole amount should be due and recoverable in execution. Default was made in payment of the first instalment, nor was there any subsequent payment of that or any other instalment. On 30th July 1886 *R* applied for execution of the four last instalments, alleging that the first had been paid. *Held* that the application was barred by limitation under art. 178, sch. II, Limitation Act, 1877. *Hurronath Roy* v. *Maheroollah, B. L. R., Sup. Vol., 618. 7 W. R., 21, Dalsook Ruttan Chand* v. *Chugan Narrun, I. L. R., 2 Bom., 356; Shib Dat* v. *Kalka Persad, I. L. R., 2 All., 443; Cheni Bas Shaha* v. *Kadum Mundul, I. L. R., 5 Calc., 97; Asmutullah Dalal* v. *Kali Churn Mitter, I. L. R., 7 Calc., 56; Nil Madhub Chuckerbutty* v. *Ram Sodoy Ghose, I. L. R., 9 Calc., 857; Ram Kulpo Bhattacharji* v. *Ram Chunder Shome, I. L. R., 14 Calc., 352*, and *Chunder Komal Das* v. *Bissassurree Dassia, 13 C. L. R., 243*, referred to. MON MOHUN ROY *v.* DURGA CHURN GOOZE . . . **I. L. R., 15 Calc., 502**

67. ——————— *Sanction to prosecution—Application for such sanction—Criminal Procedure Code, s. 195.*—Rules of limitation are foreign to the administration of criminal justice, and it is only by express statutory provision that any rule of limitation could be made applicable to criminal cases. Art. 178, sch. II, Limitation Act (XV of 1877), must be construed with reference to the wording of the other articles, and can relate only to applications *ejusdem generis*. A suit was instituted for [illegible] factory. in Court [illegible] nounced b[illegible] appealed up to the High Court, where, on the [illegible]4th June 1886, the Munsif's decree was affirmed. Defendants then applied to the Munsif for sanction to prosecute the plaintiffs for the offence of using a forged document knowing the same to be forged. The Munsif refused to sanction the prosecution prayed for; but on application to the Sessions Judge such sanction was granted. On application to revise the Sessions Judge's order granting sanction, it was contended that, after the lapse of nearly three years, sanction to prosecute should not have been granted. *Held* that there is no fixed period of limitation for making application for sanction under s. 195 of the Criminal Procedure Code. QUEEN-EMPRESS *v.* AJUDHIA SINGH **[I. L. R., 10 All., 350**

68. ——————— *Application to rescind leave to sue—Decree—Order.*—The granting of leave to sue is neither a decree nor an order, and the period of limitation for an application to rescind it is that provided by art. 178 of the Limitation Act (XV of 1877), *viz.*, three years. KESSOWAJI DAMODAR JAIRAM *v.* LUCKMIDAS LADHA **[I. L. R., 13 Bom., 404**

LIMITATION ACT, 1877—*continued.*

——————— art. 179 (1871, art. 167; 1859, s. 20).

See BENGAL TENANCY ACT, SCH. II, ART. 6 . **I. L. R., 22 Calc., 644**

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT, ETC. **[I. L. R., 12 All., 571**

See PARTITION—MISCELLANEOUS CASES **[I. L. R., 22 Calc., 425.**

See PAUPER SUIT—SUITS. **[2 B. L. R., Ap. 22**

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTIONS OF FACT. **[13 B. L. R., Ap. 1**
5 B. L. R., Ap. 59

LIMITATION ACT, 1877—*continued.*

1. LAW APPLICABLE TO APPLICATION FOR EXECUTION.

1. ———— *Application for execution*

1866 upon a bond specially registered under the provisions of s. 52 of that Act. JAI SHANKAR *v.* TETLEY . . . . I. L. R., 1 All., 586

But *see* BHAIKAMBAT *v.* FERNANDEZ [I. L. R., 5 Bom., 673

2. ———— *Order for costs by High Court on appeal.*—An order for costs made by the High Court on appeal came within the scope of art. 167 of the Limitation Act of 1871, sch II. HURBUNS LALL *v.* SHEONARAIN SINGH 21 W. R., 391

3. ———— *Application for execution of decree for costs when rejecting petition to appeal to Privy Council* —The period of limitation within

[I. L. R., 6 Calc, 201: 7 C. L. R., 79

4. ———— *Application to ascertain how much judgment-creditor has been paid.*—An

gence. MUTHOORA PERSHAD SINGH *v.* SHUMBOO GEER . . . . 22 W. R., 211

5. ———— *Decree in force at passing*

of that Act GREGORY *v.* JOYCHUNDER BANERJEE [1 Ind. Jur, N S, 80

6. ———— *Decree in force at passing of Act XIV of 1859* —In 1845 *K* and *M* obtained

in gift to them by *K*, but their application was rejected, because *M* had not joined, and, secondly, because no order could be passed in the absence of *K*. On 28th December 1861 *S S* again applied for execution of the whole decree, claiming her husband's share as his heir, and *M*'s under a deed of gift, and her application was rejected on the

LIMITATION ACT, 1877—*continued.*

1. LAW APPLICABLE TO APPLICATION FOR EXECUTION—*continued.*

ground that, as twelve years from the disappearance of her husband had not expired, and she had not performed the ceremony of kooshaputra, she could not claim as his representative An appeal from this

having performed kooshaputra on 18th June 1863.

BOISTUB LALL [2 Ind. Jur., N. S., 1: 6 W. R., Mis, 104

7. ———— *Application for execution of decree.*—Application for execution of a decree passed on 13th May 1869, and for which the period of limitation was three years, was made on 13th May 1872. *Held* the execution was barred by art. 167, sch. II of Act IX of 1871, notwithstanding the suit had been instituted before 13th April 1873. NUNDO COOMAR MOOKERJEE *v.* ISSUR CHUNDER BHUTTACHARJI . . . 12 B. L. R., Ap., 9

8. ———— *Period from which limitation runs—Payments since that date.*—Limitation Act (No. IX of 1871) governs applications to execute decrees made before the Act, and, in computing the period of limitation, the Act directs the date of the prior application to be taken, and that date cannot be altered because intermediate payments may have been made on account of maintenance NARANAPPA AIYAN *v.* NAMA AMMAL *alias* PARVATHY AMMAL [8 Mad., 97

See KRISHNA CHETTY *v.* RAMI CHETTY [8 Mad., 99

MAHALAKSHMI AMMAL *v.* LAKSHMI AMMAL [8 Mad., 105

COLLECTOR OF SOUTH ARCOT *v.* THATACHARRY [8 Mad, 40

9 ———— *Application for execution of decree—General Clauses Consolidation Act, 1868, s. 6.*—An application for execution of a decree being made on the 27th September 1871,—*Held* not to be a suit within the meaning of s 1, cl. (*a*), of Act IX of 1871, and therefore barred under sch II, art. 167, of that Act, as having been made more

March 1870, would possibly have been a sufficient proceeding within the 20th section of Act XIV of

LIMITATION ACT, 1877—*continued.*

1. LAW APPLICABLE TO APPLICATION FOR EXECUTION—*continued.*

1859 to constitute a fresh terminus whence time might run under that Act. GOVIND LAKSHUMAN *v.* NARAYAN MAHESHVAR . . . . 11 Bom., 111

BALKRISHNA *v.* GANESH . 11 Bom., 116 note

10. ——— *Act IX of 1871, s. 1—Execution of decree in suit instituted before 1st April 1873*

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nothing contained in sch. II of that Act extended to an application for execution of a decree in a suit instituted before that date. No such application was barred by s. 20 of Act XIV of 1859, if made within

made by a competent Court, having jurisdiction to try whether it was barred by time or not, such order, although erroneous, must, if unreversed, be treated as valid. MUNGUL PERSHAD DICHIT *v.* GRIJA KANT LAHIRI I. L. R., 8 Calc., 51: 11 C. L. R., 113 [L. R., 8 I. A., 123

Reversing on appeal, MUNGUL PERSHAD DICHIT *v.* SHAMA KANT LAHIRI CHOWDHRY [I. L. R., 4 Calc., 708

11. ———

—*Act IX of*
Limitation A
tions for exec

plications made during the time that Act was in force. UNNODA PERSHAD ROY *v.* KOORPAN ALI [I. L. R., 3 Calc., 518: 1 C. L. R., 408

12. ——— *Application for execution—Law in force at time of application.*—The law of limitation applicable to proceedings in execution is not the law under which the suit was insti-

VIRBHADRAPA IRSANGAPA I. L. R., 7 Bom., 459

13. ——— *Execution of decree—Li-*

by those of art. 179 of Act XV of 1877; and that, as the application had not been made within any one of the periods given in the third column of art. 167, it was barred by limitation. *Held* also, following *Mungul Pershad Dichit v. Grija Kant Lahiri,*

DHUN LALL [I. L. R., 9 Calc., 446: 12 C. L. R., 431

14. ——— *Execution of decree, Ap-*

fees, that is to say, costs for bringing certain pro- ... On the 28th

of execution of a decree, and that the application of the 28th March 1881, being within three years from the date of the deposit, was not barred by limitation.

repealed in respect of suits instituted before the 1st of April 1873. RADHA PROSAD SINGH *v.* SUNDUR LALL . . . I. L. R., 9 Calc., 644

15. ——— *Act IX of 1871, s. 1—Application for execution of decree passed before Act of 1877 came into force—Application to keep alive decree.*—The plaintiff obtained a decree against the defendant in 1872. He first applied for its execution

for any step to be taken towards executing the decree, it was not in accordance with art. 179, sch. II of Act XV of 1877, and did not save the present application from being barred. *Mungul Pershad Dichit v. Grija Kant Lahiri, I. L. R., 8 Calc., 51,* explained. GURUPADAPA BASAPA *v.* VIRBHADRAPA IRASANGAPA . . I. L. R., 7 Bom., 459

16. ——— *Proceeding to enforce judgment.*—Act XV of 1877 operates from the dat

LIMITATION ACT, 1877—*continued.*

1. LAW APPLICABLE TO APPLICATION FOR EXECUTION—*continued.*

-on which it came into force as regards all applications made under it *Behary Lall* v. *Goberdhun Lall, I. L. R., 9 Calc., 446,* dissented from. An application for execution was made on the 2nd of March 1872. In the execution-proceedings certain properties were attached and a sale-proclamation was issued. A claim to a portion of the properties was then preferred by third parties and allowed on the 17th of June 1872 The decree-holder failed to take necessary measures to bring the remainder of the property to sale, and the case was struck off on the 4th of July 1872. A subsequent application for execution was made on the 14th of June 1875 *Held* that the subsequent application was not barred by the provisions of s. 20, Act XIV of 1859. BECHARAM DUTTA *v.* ABDUL WAHED . . I. L. R., 11 Calc., 55

17. ———— *Applications under s 89, Transfer of Property Act (IV of 1882)* —Art. 179, sch. II of the Limitation Act (XV of 1877), applies to applications under s. 89 of the Transfer of Property Act. BHAGAWAN RAMJI MARWADI *v.* GANU [I. L. R , 23 Bom , 644

18. ———— *Decree of Small Cause Court transferred to High Court for execution—Civil Procedure Code (Act VIII of 1859), ss. 287, 288, (Act XIV of 1882), ss. 227, 228—Order in suit liable to be questioned by third persons not parties to suit—Revivor.*—Having regard to the provisions of ss. 227 and 228 of the Code of Civil Procedure (Act XIV of 1882) [illegible]

1885, for payment out to him of certain moneys realized in the proceedings in part satisfaction of his decree. Payment was actually made on the 8th August 1885 The next step in execution was an application made on the 11th September 1888, the usual notice was issued, and no cause being shown by the judgment-debtor, an order was made on the 19th December for the attachment of certain moneys in the hands of a receiver belonging to the judgment-debtor These moneys were also attached by other judgment-creditors. The question was then [illegible]

LIMITATION ACT, 1877—*continued.*

1. LAW APPLICABLE TO APPLICATION FOR EXECUTION—*concluded.*

barred by limitation, and that *S* was not entitled to share under the provisions of s. 295. *Held* further that, the order of the 19th December 1888 having been made out of time, though on notice to the [illegible]

doubted. TINCOWRIE DAWN *v.* DEBENDRO NATH MOOKERJEE . . . I. L. R., 17 Calc., 491

2 PERIOD FROM WHICH LIMITATION RUNS

(*a*) GENERALLY.

19. ———— *Meaning of the words "date of the decree."*—The words "date of the decree" in sch. II, art 179, of the Limitation Act mean the date the decree is directed to bear under s 205 of the Code of Civil Procedure, and that is the [illegible]

Madhub Mitter v. *Matungini Dassi, I. L. R., 13 Calc., 104,* referred to. GOLAM GAFFAR MANDAL *v.* GOLJAN BIBI . I. L. R., 25 Calc., 109

AFZUL HOSSAIN *v* UMDA BIBI . 1 C. W. N., 93

20. ———— *Decree specifying a certain time for execution—Construction—Condition precedent.*—The plaintiff obtained a decree on the 25th July 1882, which directed that he should give the defendant possession of certain parcels of land at the end of next Margashirsha (*i.e.*, 9th [illegible]

lost his right to execute the decree *Held* that the application was not time-barred. The specification of the end of Margashirsha had merely the effect of postponing the operation of the decree till that time, and the plaintiff had three years from that date within which he might seek execution The mention of a term when a particular right is to become enforceable is not a condition precedent, whether the enforcement be otherwise subject to a condition or not. NARAIN CHITKO JEVEKAR *v* VITHUL PARSHOTAM . . I. L. R., 12 Bom., 23

21. ———— *Execution of decree determining rights of rival religious sects—Decree, whether executory or declaratory—How far a sect bound by decree against some of its members.*—In a suit determined in 1840, in which various members

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

of the Vadagalai sect residing in a certain village

Vadagalai sect, asserting that the members of Tengalai sect had acted in contravention of the decree in the above suit, filed an execution-petition therein, praying that various members of the Tengalai sect be arrested, and "that the image of their priest, which they attempt to worship publicly, be removed until they obey the terms of the decree." It appeared that in 1868 the District Magistrate had granted an application to restrain the Tengalais from acting contrary to the above decree. The execution-petition was dismissed by the District Court. *Held* the petition was rightly dismissed, since the execution of the decree was barred by limitation, which began *to run at all events from 1868, and the decree, if it* was capable of execution at all, could not be executed against the parties to the present petition. SADAGOPACHARI *v.* KRISHNAMACHARI [I. L. R., 12 Mad., 356

(*b*) CONTINUOUS PROCEEDINGS.

22. ———— *Order refusing execution operating as stay of process.*—A decree-holder applied for the sale of certain property then under attachment in the suit. The Court refused to issue process for the sale, on the ground that the property could

VELIA THAMBRAKLE . . . 4 Mad., 261

23. ———— *Continuing attachment—Process to enforce decree.*—An attachment of property in execution of a decree operates *de die in*

for execution of the decree,—*Held,* on an application made reversing the decision of the Court below, that the right to enforce payment of the amount due under the decree was not barred. BROOKS *v.* PATTAMMARI NANJAPPA NAICK . . 4 Mad., 316

But *see* RADHIKA CHOWDHRAIN *v.* LUKHEE CHUNDER GHOSE . . . 18 W. R., 513

24. ———— *Continued proceeding—Application struck off.*—The effect of an order striking off execution-proceedings in consequence of an adverse decision against the decree holder under Act VIII of 1859, s. 246, is not to dispose finally of the

continuation of the former proceedings, and is therefore not an application to execute the decree within the meaning of Act IX of 1871, sch. II, art. 167. PYAROO TUHOVILDARINEE *v.* NAZIR HOSSEIN [23 W. R., 183

25. ———— *Application for execution "struck off the file"—Further application*

After the termination of the proce... Subordinate Court, the decree-holder applied again for execution on 6th July 1896. *Held* that the ... as a continua- ...y limitation. ...LLAI ... 1 Mad., 261

26. ———— *Decree-holder, Refund by, of money paid to satisfy decree—Revival of original decree—Application to execute.*—A decree having been satisfied by the decree-holder obtaining an order for the payment to him of a certain sum of money which was deposited in Court in his judg- ... owing to

DOSSEE . . . . . . 24 W. ...

27. ———— *Separate decrees—Continued application.*—Where a plaintiff obtained separate decrees against several persons in respect of several duties which they were to perform separately, and the plaintiff chose to proceed in the first instance against some, and not against others, in taking out execution,—*Held* that the proceedings in taking at different times were not continuous proceedings in execution, and that limitation would run separately

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

from the date of the latest action in each case. CHOWDHRY HURREEHUR SINGH *v.* HRIDOY NARAIN [25 W. R., 310

28. ———— *Application for execution of decree—Decree barred by lapse of time.*—In a decree for possession passed on 19th December 1874, the enquiry into the mesne profits was reserved for the execution stage. Possession having been taken, execution was taken out for costs, but owing to dis-

that, as the application of 1st June 1870 was not for a continuation of the original suit, but for execution of the decree, the judgment-creditor was bound by the rules relating to execution, but that, even if

29. ———— *Application for execution of decree—Continued application.*—An application which is pending must be looked upon as a continuous proceeding until it is disposed of. SHURUT CHUNDER SEN *v.* ABDOOL KHYR MAHOMED MOHUTESUR BILLAH . . . 23 W. R., 327

30. ———— *Continued application—*

31. ———— *Application for execution of decree.*—On the 26th June 1867 a decree-holder applied for execution of his decree. A notice was

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

ditor must be considered as going on with one and the same proceeding, as the first Court actually made an order for a warrant to issue on that day. DAMODHAR LAKHMIDAS *v.* GULABDAS LALCHAI [9 Bom., 254

32. ———— *Decree remaining under*

33. ———— *Application for execution of decree—Continuing proceedings.*—A decree-holder applied for execution on the 10th of October 1871. On the 24th of February 1872 he made an

34. ———— *Application for execution of decree—Reversal of sale in execution.*—*A* obtained a decree against *B* on the 21st of June 1871, and applied for execution on the 10th of July following. On the 2nd of October of the same year property attached under such execution was sold, and the sale-proceeds being paid over to *A*, the execution-proceedings were struck off the file on the 28th of July 18
an order s
sale-procee
ber 1874,

35. ———— *Execution of decree—Proceedings to enforce decree.*—*Held* by a Full

LIMITATION ACT, 1877—*continued.*

PERIOD FROM WHICH LIMITATION RUNS—*continued.*

Bench (PEARSON, J., dissenting) that an application to execute a decree against judgment-debtor's property, made more than three years after the last [illegible]

[illegible] of 1871, execution of decree was barred. PARAS RAM *v.* GARDNER . . I. L. R., 1 All., 355

36. ——— *Continuation of previous application*—In June 1892, an application was made for execution of a decree, and it was dismissed, the applicant being relegated to a suit to establish his right. He did not sue, but in September 1892 he put in a fresh application to [illegible]

[I. L. R., 21 Mad., 257

37. ——— *Execution stayed by reason of injunction for more than three years—Revival* [illegible]

property as belonging to the judgment-debtor under the second decree Subsequently a suit was filed [illegible]

[illegible] he act of [illegible] e decree- [illegible] *ndry v.* [illegible] *le., 371,* [illegible] *Jadu-* [illegible] and *Paras Ram v. Gardner, I. L. R., 1 All, 355*, referred to LAKHMI CHAND *v.* BALLAM DAS [I. L. R., 17 All., 425

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

38. ——— *Resistance and obstruction to execution of decree—Suit under s. 331 of Civil Procedure Code (1882) to remove obstruction—Failure of such suit—Subsequently application for execution of original decree.*—On the 7th March 1889, a decree-holder presented a darkast for execution of a decree which awarded him possession of certain immoveable property. This darkhast was opposed by a third party, who was in possession of the property. The decree-holder [illegible]

November 1892, he presented a second darkhast for execution *Held* that the second darkhast was barred by limitation. The decree-holder having failed to remove the obstruction under s 331 of the Code of Civil Procedure, the second darkhast could not be treated as a continuance or revival of the first. [illegible] *Bom., 29,* [illegible] *19 Bom.,* [illegible] MAN *v.* [illegible] m., 175

39. [illegible] an order [illegible]

perty having been attached, a claim was preferred by a third party and allowed. The decree-holder brought a suit for a declaration that the property belonged to the judgment-debtor, and the suit was decreed. The decree-holder thereupon made an application for execution on the 16th July 1894, more than three [illegible] *Held* that the [illegible]

40. ——— *Decree for possession with mesne profits till delivery of possession—Darkhast for execution—Obstruction in execution—Application for removal of obstruction registered as a suit—Disposal of the darkhast.*—The plaintiffs, having obtained a decree for possession of certain

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

lands with mesne profits till delivery of possession,

applied for execution, it was contended that the application was time-barred, as it was presented after the expiration of three years from the time of the disposal of the original darkhast, and it was wrong to grant mesne profits for more than three years from the date of the decree, though possession was not delivered during that period. *Held* that, when litigation under s. 331 of the Civil Procedure Code (Act XIV of 1882) is pending, the proceedings in execution are suspended during that litigation, the application therefore was not barred, but was to be considered as a renewal of the former application before the obstruction to execution took place. NARAYAN GOVIND MANIK *v.* SONO SADASHIV **I. L. R., 24 Bom., 345**

41. ——— *Application for execution of decree—Revival—Dekkan Agriculturists' Relief Act, 1879 and 1881, s. 48.*—On 20th July 1871 the plaintiffs obtained a decree against the defen-

postponed to the 31st May 1879. On the 13th June 1879 the plaintiffs informed the Court that negotiations were proceeding between themselves and the defe

and prayed

1877 might

negotiations

plication. The negotiations for settlement proved abortive, and the case being one to which the Dekkan Agriculturists' Relief Act (XVII of 1879) applied, the plaintiffs took steps to obtain a conciliator's certificate. These proceedings occupied the period

tions failed, a fresh application should be presented, the application of the 13th December 1881 was to be regarded as an application for the revival of the old execution proceedings. But, in any case, the

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

by the provisions of the Dekkan Agriculturists' Relief Act the period during which the conciliator was endeavouring to effect an amicable settlement—*viz.*, from 8th July 1880 to 1st December 1881—would have to be deducted, the present application was within time. VENKATRAV BAPU *v.* BIJESING VITHALSING **I. L. R., 10 Bom., 108**

42. ——— *Civil Procedure Code, s. 583—Execution of decree—Decree enforcing the right of pre-emption—Non-payment of purchase-money*

and it was drawn out by the defendant in August 1881. Meanwhile, in July 1881, the High Court in

the sense of s. 583 of the Civil Procedure Code, "a party entitled to a benefit by way of restitution

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

within three years from that application, was within time. NAND RAM *v.* SITA RAM [I. L. R., 8 All., 545

Contra, KURUPAM ZAMINDAR *v.* SADASIVA [I. L. R., 10 Mad., 66

HARISH CHANDRA SHAHA *v* CHANDRA MOHAN DASS . . . I. L R., 28 Calc., 109

43. ——— *Application for execution of decree—Step in aid of execution.*—*G* sued *K* as the legal representative of her deceased husband, *S*, on a bond executed by *S* in his favour, and obtained a decree. Subsequently he sued *K* on a bond which she had personally executed in his favour, and obtained a decree. On the 7th September 1875 he applied for execution of both these decrees, and *S*'s landed estate, which stood recorded in *K*'s name, was attached. This estate was sold on the 20th February 1877, being put up for sale in one lot, in satisfaction of both decrees, in accordance with an application

in another, instituted suits against *G* claiming to recover from him such portion of the proceeds of the sale of *S*'s property as had been appropriated to the discharge of *G*'s decree against *S*, and such heirs obtained decrees for certain sums, which *G* was

aid of execution within the meaning of art. 179, sch. II of Act XV of 1877, from which limitation could be computed, and the application of the 16th May 1879 was barred by limitation. *Pyaroo Tuhobildarinee* v. *Nazir Hossein, 23 W. R., 183; Paras Ram* v *Gardner, I L. R., 1 All., 355:* and *Issurree Dassee* v. *Abdul Khalak, I. L. R., 4 Calc., 415,* distinguished by STRAIGHT, J. KHAIR-UN-NISSA *v.* GAURI SHANKAR . I. L. R., 3 All., 484

44. ——— *Futile attachment of property—Subsequent application for ...*

of, the previous proceedings in execution, and was therefore made too late, more than three years having elapsed since the passing of the decree. KRISHNAJI RAGHUNATH *v.* ANANDRAV BALLAL KOLHALKAR [I. L. R., 7 Bom., 293

45. ——— *Application for execution ...*

the decree was time-barred. *Krishnaji ... Kothavle* v. *Anandrav Ballal Kolhalkar, I. L. R., 7 Bom., 293,* followed. HAR SARUP *v.* BALGOBIND [I. L. R., 18 All., 9

46. ——— *Application for execution of decree.*—On the 16th September 1879 *A*, in execution of a decree against *V*, applied for attachment and sale of certain land, and on the 8th of January 1880 the sale was confirmed. The purchaser, having ... brought a suit ... the 2nd ... 1881

obtained an order for restitution of the purchase-money, which was thereupon paid to him by *A*. On the 2nd March 1883, *A* applied for execution of the decree by arrest of *V*. *Held* that this application was barred by limitation. *Khair-un-nissa* v. *Gauri Shankar, I. L. R., 3 All., 484,* followed. *Paras Ram* v. *Gardner, I. L. R., 1 All., 355,* distinguished. VIRASAMI *v.* ATHI . . I. L. R., 7 Mad., 595

... *for execution*

that the defendants should put the plaintiff in possession of the land upon payment by plaintiff to defendant No. 1 of the mortgage amount, and of the value of improvements, to be determined in execution, to such of the defendants as should be found entitled. On the 12th August 1880 the plaintiff ... 1881

application was not barred by limitation

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

Hossein v. Mujeedunnissa, I. L. R., 4 Calc., 629, approved. KRISHNAN *v.* NILAKANDAN [I. L. R., 8 Mad., 137

48. ———— *Execution of decree—Arrears of rent, Decree for—Beng. Act VIII of 1869, s. 58—Application for execution—Suspended proceedings, Effect of.*—*G* obtained an *ex-parte* decree in 1882 for a sum less than R500 as arrears of rent. Execution was taken out on the

[I. L. R., 14 Calc., 385

CHANDRA KANT BANNERJEE *v.* SURJI KANTO RAI CHOWDHURY I. L. R., 14 Calc., 387 note

49. ———— *Decree—Execution—Attachment set aside—Time occupied in suing to declare property liable to attachment not excluded from computation.*—An application for execution

application was barred by limitation. *Basant Lal v. Batul Bibi, I. L. R., 6 All., 23,* dissented from. NARAYANA *v.* PAPPI BRAHMANI [I. L. R., 10 Mad., 22

50. ———— *Darkhast presented in 1890, in legal continuance of a darkhast of 1882—*

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

that the present application was not barred, the darkhast being in legal continuance of the darkhast of 1882. CHINTAMAN DAMODAR AGASHE *v.* BALSHASTRI . . . I. L. R., 16 Bom., 294

(c) WHERE THERE HAS BEEN AN APPEAL.

51. ———— cl. 2—*Period from which limitation runs.*—The words "judgment, decree, or order" in s. 20 meant a judgment, decree, or

The three years' limitation prescribed by s. 20, Act XIV of 1859, counted from the date of the final decree of the Appellate Court, in a case in which the judgment-debtor had appealed against the original decree. HUREE BUNGSHO BANERJEE *v.* RAMESSUR BANERJEE . . . 6 W. R., Mis., 38

SHAMI MAHOMED *v.* MAHOMED ALI KHAN [2 B. L. R., Ap., 22: 11 W. R., 67

GRISH CHUNDER BANERJEE *v.* BHANOO MOTEE CHOWDHRAIN . . . . 11 W. R., 329

MAHOMED BUSSEEROOLLAH *v.* RAM KANT CHOWDHRY . . . . 16 W. R., 266

BULDEO *v.* GUJ SINGH [1 N. W., Ed. 1873, 240

Provided (as was held under Act XIV of 1859) the decree-holder had opposed the appeal. BUKRONATH CHUCKERBUTTY *v.* NILMONEE SINGH DEO [18 W. R., 7

RAM RUTTUN BANERJEE *v.* AMEEROOLMOLK BUNWAREE GOBIND . . . 6 W. R., Mis., 95

Where the appeal was dismissed for default, it was held the order was not a new decree from which limitation began again to run. VIRASAMY MUDALI *v.* MANOMMANYAMMAL . . . 4 Mad., 32

BIPRO DOSS GOSSAIN *v.* CHUNDER SIKUR BHUTTACHARJEE B. L. R., Sup. Vol., 718: [2 Ind. Jur., N. S., 248: 7 W. R., 521

Under the present Act, it expressly counts from the date of the order made on appeal, which is in accordance with the cases of ARUNA CHELLA THUDAYAN *v.* VELUDAYAN . 5 Mad., 215

and BAPUBAV KRISHNA *v.* MADHAVRAV RAMRAV [5 Bom., A. C., 214

52. ———— *Period from which limitation runs.*—Where a contest is raised between a decree-holder and judgment-debtor as to service of notice, execution proceedings cannot be carried on further till the question is decided, and limitation in respect to future proceedings must run from the

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

date of such decision. SUROOP CHUNDER ROY *v.* GOLUCK CHUNDER DHUR . . 14 W. R., 477

53.—————— *Final decision of Court where proceedings are contested.*—So long as an actual contest is going on between a decree-holder and judgment-debtor as to the judgment, limitation must be computed from the final decision of the Court. DHIRAJ MAHTAB CHUND BAHADUR *v.* BULRAM SINGH BABOO

[5 B. L. R., 611 : 14 W. R., P. C., 21
13 Moore's I. A., 479

CHOTAY LAL *v.* RAM DYAL . 2 N. W., 482

MODHOOSOODUN MOOKERJEE v. KIRTEE CHUNDER GHOSE . . . . . . 18 W. R., 7

54.—————— *Date of final decree.*—A suit was dismissed with costs in a Court of Small Causes, after which an application for a new-trial was rejected, and subsequently another application

High Court, limitation beginning to run from the date of such rejection. PRAN KISTO BANERJEE *v.* NUZIMOODDEEN . . . 9 W. R., 397

55.—————— *Decree of Small Cause Court.*—Where a Court of Small Causes delivered final judgment and decree on the whole matter in

execution of the decree was not barred by lapse of time. PUNCHANADA CHETTI *v.* RAMAN CHETTI

[1 Mad., 446

56.—————— *Application for execution recognizing decree on appeal.*—An application for execution of the decree in the original suit and proceedings thereon, which, without formally and expressly asking for execution of the decrees in

KARUPPANAN *v.* MUTHUNNAN SERVEY

[5 Mad., 105

58.—————— *Execution of decree.*—The words "where there has been an appeal" in cl. 2, art. 167 of sch II of Act IX of 1871, contemplate and mean an appeal from the decree, and do not include an appeal from an order dismissing an application to set aside a decree under s. 119 of Act VIII of 1859. SHEO PRASAD *v.* ANRUDH SINGH

[I. L. R., 2 All., 273

59.—————— *Execution of decree—"Where there has been an appeal."*—The words "where there has been an appeal" in cl. 2, art. 179

60.—————— *Presentation of appeal—Civil Procedure Code (Act XIV of 1882),*

Code of Civil Procedure. The words "where there has been an appeal," in art. 179, cl. 2, of sch. II of the Limitation Act, 1877, mean where a memorandum of appeal has been presented in Court. In execution of a decree against which an appeal has been presented, but rejected on the ground that it was after time, limitation begins to run from the date of the final decree or order of the Appellate Court. AKSHOY KUMAR NUNDI *v.* CHUNDER MOHUN CHATHATI . . I. L. R., 16 Calc., 250

61.—————— *Application for execution of decree for refund of costs—Proceedings to determine whether exemption from costs was personal or in representative character.*—On an application

RUL HUQ

62.—————— *Date of final decree*—*A* obtained a joint and several money-decree against four defendants on the 12th November 1872. One of the defendants preferred an appeal, and the decree as against him was set aside by the High Court on the 19th February 1875. Subsequently,

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

on the 1st of August 1876, *A* sued out execution against the three defendants who had not appealed. *Held* that *A*'s suit was not barred by limitation, as the final decree in the original suit within the meaning of art 167 of Act IX of 187 was the decree as amended by the High Court on the 19th of February 1875. GUNGAMOYEE DASSEE *v.* SHIB SUNKUR BHUTTACHARJEE . . . 3 C. L. R., 430

63. ——— *Execution of decree —Final decree of Appellate Court.*—The Munsif gave the plaintiffs in a suit for possession of land and for mesne profits a decree for p ssession, but dismissed the claim for mesne profits. An appeal was preferred to the Judge, who affirmed the decree for possession and remanded the case to the Munsif, under s. 351 of Act VIII of 1859 to determine the mesne profits due to the plaintiffs The Munsif

[illegible]

tained a decree for mesne profits Finally, on the 6th March 1 74, the High Court modified the Judge's decree for possession, but did not interfere with the order of remand. *Held*, on the plaintiffs applying for execution of the Judge's decree, dated 7th June 1873, that the limitation for the execution of such decree ran not from the date of such decree, but from the date of the High Court's decree, which was the "final decree of the Appellate Court," and the only "final decree," within the meaning of art 167, sch II of Act IX of 1871. IMAM ALI *v.* DASAUNDHI RAM . I. L. R., 1 All., 508

64. ——— *Execution of joint decree against two or more defendants* —In a suit for possession of land brought by *A* against *B*, *C*, and *D*, a decree was passed on the 14th of April 1874 for

[illegible]

the Court of first instance for execution to issue against *C* and *D* for the costs specified in the decree passed on the 14th April 18 4 *C* and *D* successfully objected in the Court of first instance and the lower Appellate Court that, more than three years having elapsed since the date of the decree, the decree for costs could not be executed, the application for execution being barred by art. 179 of sch. II of Act XV of 1877 *Held* on appeal to the High C

[illegible]

order of the High Court. MULLICK AHMED ZUMMA *alias* TETUR *v.* MAHOMED SYED

[I. L. R., 6 Calc., 194: 6 C. L. R., 573

65. ——— *"Appellate Court" —Execution of decree.*—The meaning of para. 2 to art. 179 of the second schedule of Act XV of 1877 is, that where there has been an appeal, the period of [illegible] Court to [illegible] an order [illegible] Appellate [illegible] which the appeal, mentioned in the article, has been preferred. WAZIR MAHTON *v.* LULIT SINGH

[I. L. R., 9 Calc., 100

66. ——— *Execution of decree— Rejection of appeal as not be na proper[illegible]*

[illegible]

[I. L. R., 6 All., 438

67. ——— *Starting point for limitation where an appeal has abated.*—*Held*

[illegible]

[I. L. R., 20 All., 124

68. ——— *Application for execu-*

[illegible]

property On the 24th September he obtained a

[illegible]

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

from the final decree of the Appellate Court. BASANT LAL v NAJMUNNISSA BIBI . I. L. R., 6 All., 14

69.—————— *Date from which limit-*

[illegible]

appeal, the date of the decree or of application is the point from which limitation counts, but not when there is an appeal. *Held* further that the application by plaintiff to the Court (9th February 1877) for the money paid in by the purchaser was a step taken to aid in the execution of the decree. VENKATARAYALU v. NARASIMHA . . I. L. R., 2 Mad., 174

70.—————— *Decree of High Court*

[illegible]

does not operate against the decree-holder in the matter of time limitation not running against him until the result of the appeal is known, or the rule otherwise falls to the ground. GUNESH DUTT SINGH v. MUGNEERAM CHOWDHRY . 19 W. R., 186

[illegible]

Her Majesty in Council. *Held* therefore, where an

[illegible]

July 1879, that under art. 179 (2), sch. II of Act XV of 1877, the limitation of such application must be computed from the date of the order of Her Majesty in Council NARSINGH DAS v. NARAIN DAS . . . . I. L. R., 2 All., 763

72. —————— *"Appeal"—"Appellate Court"—Order of Privy Council—Application for execution of decree*—The term "appeal" in art 167 of sch. II of the Limitation Act (IX of 1871) includes an appeal to the Privy Council; and the term "Appellate Court" in the same article includes the Judicial Committee of the Privy Council sitting for the purpose of hearing appeals from orders passed by British Courts in India. Where an appeal had been preferred to Her Majesty in Council from a decree of

[illegible]

quently barred.

[illegible]

73.—————— *Appeal by one of several defendants—Execution of decree—Application for execution against defendant who has not appealed.*—On the 11th July 1877 a decree was made against *B* and *J*, the defendants in a suit, against which *J* alone appealed, such appeal not proceeding on a ground common to him and *B*. The Appellate Court affirmed such decree on the 20th November 1877. On the 23rd September 1880 the holder of such decree applied for execution against *B*. *Held* that, so far as *B* was concerned, limitation should be computed from the date of such decree, and not from the date of the decree of the Appellate Court, and such application was therefore barred by limitation SANGRAM SINGH v. BUJHARAT SINGH I. L. R., 4 All., 36

74. —————— *Appeal by some only and not all of the defendants—Amendment of decree—Review of judgment.*—On the 7th July 1864 a District Court gave the plaintiff in a suit a decree against all the defendants, including *B*. All the defendants appealed to the Sudder Court from such decree, except *B*. The Sudder Court, on the 6th March 1865, set aside such decree and dismissed the suit. The plaintiff appealed to Her Majesty in Council from the Sudder Court's decree, all the defendants except *B* being respondents to this appeal. Her Majesty in Council, on the 17th March 1869, made a decree reversing the Sudder Court's

[illegible]

was under execution up to July 1872. On ... October 1874 the plaintiff applied for amendment of such decree in certain respects, it being incapable of execution in those respects. *B* was a party to this proceeding. On the 16th August 1876 such decree was amended; and the plaintiff subsequently applied for its execution as amended against all the defendants. *Held* that the application of the 9th October 1869 was within time, computing from the date of the decree of Her Majesty in Council. *Chedoo Lal v. Nand Coomar Lal, 6 W. R., Mis, 60.* ... being

[illegible]

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

which limitation would run in respect of the subsequent application for execution, which was therefore within time. KISHEN SAHAI *v.* COLLECTOR OF ALLAHABAD . . . I. L. R., 4 All., 137

See KALI PROSUNNO BASU ROY *v.* LAL MOHAN GUHA ROY . . . I. L. R., 25 Calc., 258 [2 C. W. N., 219

75 ———.

1881 a decree against two defendants, the decree as against the first defendant being one for partition, and as against the second defendant (who had set up a julkur right on the lands claimed to be partitioned and had contended that partition could not be had, and had obtained a partial decree, but had been ordered to pay partial costs to the plaintiff), being one for costs. The first defendant alone appealed against this decree, but unsuccessfully, his

[I. L. R., 16 Calc., 598

76 ———

on to the record of the appeal as respondents. The appeal having been dismissed, the decree holder applied on 20th October 1887 for execution against the shares of defendants Nos. 3 and 4. *Held* the application for execution was barred by the Limitation Act, 1877, sch. ii, art. 179. MUTHU *v.* CHELLAPPA . . . I. L. R., 12 Mad., 479

77. ——— *Appeal against part of decree—Execution against judgment-debtors who*

GHUNATH PERSHAD *v.* ABDUL HYE [I. L. R., 14 Calc., 26

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

78. ——— *Execution of decree—*

the proportions of which they were severally in possession, as also the costs separately payable by each of them to the plaintiff; and where two only of the defendants appealed on pleas which did not assail

Syed, I. L. R., 6 Calc., 194, approved. *Held* by BRODHURST and MAHMOOD, *JJ., contra,* that art. 179, cl. 2, must be construed as applying without any exceptions to decrees from which an appeal has been lodged by any of the parties to the litigation in the original suit. *Nur-ul-Hasan v. Muhammad Hasan, I. L. R., 8 All., 573,* followed. MASHIAT-UN-NISSA *v.* RANI . . . I. L. R., 13 All., 1

79. ——— *Date of final decree or order of the Appellate Court—Execution of decree.*—Certain plaintiffs obtained a decree for pre-emption in respect of four villages. The defendant appealed, and the lower Appellate Court dismissed the appeal

his appeal c

Appellate C

in suit. In this second appeal the plaintiff's suit was dismissed as to one of the villages with regard to which the appeal was preferred, and the defendant's appeal was dismissed as to the other. *Held* that in respect of all the three villages as to which the final decree stood in favour of the plaintiff, limitation began to run against the decree-holders from the date of the decree in second appeal and not as to two of them from the date of the lower Appellate Court's decree. *Hur Proshaud Roy v. Enayet Hossein, 2 C. L. R., 471, Sangram Singh v. Bujharat Singh, I. L. R., 4 All., 36,* and *Mashiat-un-nissa v. Rani, I. L. R., 13 All., 1,* distinguished. BADI-UN-NISSA *v.* SHAMS-UD-DIN

[I. L. R., 17 All., 103

80. ——— *Final decree of the Appellate Court—Appeal as to portion of the claim*

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

disallowed.—*A* brought a suit against *B* for a sum of money, and obtained a decree for a portion of the amount claimed. On the 30th November 1891, the plaintiff appealed as to the balance of his claim; but the appeal was dismissed by the District Court on the 1st J[illegible] the 31st May [illegible] June 1895, [illegible] holder, to ex[illegible] raised by the judgment-debtor that execution was barred by lapse of time. *Held* that art. 79, sch. II, cl. (2), of the Limitation Act applied to the case, the period of limitation ran from the date of the final decree of the Appellate Court, and the application for execution, being within three years from that date, was within time. *Sakhalchand Rikhaudas v. Velchand Gujar, I. L. R., 18 Bom., 203,* followed. HARKANT SEN *v.* BIRAJ MOHAN ROY

[I. L. R., 23 Calc., 876

81. ——————— *Appeal by one of several defendants against part of the decree.*—The plaintiff obtained a joint decree against defendants for possession of immoveable property and damages on 2[illegible] May 188[illegible] Against that decree all the defendants except defendant No. 1 appealed, and on [illegible]

[illegible]

decree of that date *Held* that limitation against defendant No 1 would run from date of decree in [illegible]

MANNA *v.* GOSAIN DAS KALAY

[I. L. R., 25 Calc., 594
2 C. W. N., 556

82. ——————— *Ex-parte decree—Application to set decree aside*[illegible]

[illegible]

sented a darkhast for execution of the decree on 24th September 1889. *Held* that the darkhast was time-barred under art. 179, cl. 2, of the Limitation Act (XV of 1877). The appeal referred to in that clause is clearly an appeal from the decree or order sought to be executed, and not an appeal from an order of the Court refusing to set it aside. The unsuccessful

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

[illegible]

83. ——————— *Execution of decree—Appeal by plaintiff against part of decree making all defendants respondents—Execution of part of decree not appealed against.*—On the 23rd March 1886 the plaintiff obtained a decree in the Court of first instance against five defendants, declaring his right to certain specific immoveable property, which was, however, modified on an appeal preferred by the defendants, the decree of the lower Appellate Court giving the plaintiff a decree for only two-thirds of the property claimed, and dismissing his suit in respect of the remaining one-third in favour of defendants Nos. 2 and 4. The lower Appellate Court's decree was dated the 13th July 1886. Against that decree plaintiff preferred a second ap[illegible] the defendants [illegible] ver, dismissed [illegible] f on the 13th [illegible] e decree in his [illegible] the property held to belong to him and defendants Nos. 1 and 5 objected on the ground that the right to execution was barred, limitation running from the 13th July 1886, the date of the lower Appellate Court's decree in the plaintiff's favour. *Held* that limitation ran from the 16th June 1887, and that the application was not therefore barred. All the defendants were [illegible] and the Court to which [illegible] not [illegible] l the [illegible] ether [illegible] ur of [illegible] as or [illegible] d all [illegible] to do so, might have altered the decree against any of them. *Quære*—Whether under such circumstances the Legislature could have intended the Court exe[illegible]

[illegible]

84. ——————— *Appeal against part of decree only—Appeal dismissed—Application for execution of original decree.*—On the 26th June 1891, in a suit against seven persons who were members of a Mahomedan family, the plaintiff obtained a decree on a mortgage. The decree directed the sale of $\frac{9}{14}$ of the mortgaged property, but it exonerated

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

from liability the share of a female member (defendant No. 2) of the family, which was $\frac{1}{12}$ of the whole estate. The plaintiff appealed as to the $\frac{11}{12}$ share only. He made all the defendants respondents to the appeal, but the name of the first defendant was afterwards struck out, as he could not be served with notice. His interests, however, were identical with those of defendants Nos. 3 to 7. On

unaffected by the appeal, and that consequently the plaintiff's application for execution of that decree was barred under art 179 of the Limitation Act (XV of 1877), not having been made within three years from the 26th June 1891. *Held* that the application was not barred The date of the appellate decree, and not that of the original decree, was

any appeal by any party. *Per* RANADE, *J.*—Except in the case where a nominally single decree awards separate reliefs against separate defendants, the words of art 179 must be construed in their natural sense as permitting an extension of limitation where an appeal is preferred and is not withdrawn. ABDUL RAHIMAN *v* MAIDIN SAIBA

[I. L. R., 22 Bom., 500

85. ——— *Final decree of Appellate Court—Decree against joint defendants—Ap-*

liable, but gave both defendants two months' time for payment, which provision was not contained in the original decree. This revised judgment was upheld by the District Court on appeal on 25th

the first defendant was not barred by limitation, inasmuch as it had been imperilled by the appeal on the

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

second defendant. *Per* MOORE, *J.*—Under art. 179, cl. (2), of sch. II of the Limitation Act, it is immaterial whether some only or all of several judgment-debtors prefer an appeal There is only

appeal was foreign to the intention of the Legislature. VIRARAGHAVA AYYANGAR *v* PONNAMMAL

[I. L. R., 23 Mad., 60

86. ——— *Application for possession and mesne profits after execution of decree is barred.*—*A*, as purchaser of a decree against *B*, applied for execution thereof, and, having caused five fields of *B* to be sold in execution, purchased four of them at the Court-sale, and one from an execution-purchaser. On 10th July 1871, however, the High Court, in an appeal by *B*, held *A*'s application for execution to have been time-barred, and reversed the orders of the two lower Courts *A* having been put in possession of the fields under the orders of

profits, but the District Judge on appeal held *B*'s application barred under Act IX of 1871, sch II, cl 166. *Held* by the High Court that the exception in cl. 166 of sch II of the Limitation Act, IX of 1871, was not restricted to any particular species of appeal, that *B*'s application fell within cl 167, and not within cl 166, and therefore was not barred UMIASHANKAR LAKHMIRAM *v.* CHOTALAL VAJERAM . I. L. R., 1 Bom., 19

87 ——— *Application for execution of decree.*—*A*, the judgment-debtor, opposed an application made by *B*, the judgment-creditor, for execution under a decree This objection was overruled on the 17th January 1876. The appeal by *A* from this order (*B* being represented and opposing *A*'s appeal at the hearing) was dismissed on the 2nd October 1877 On a second application for execution made by *B* on the 18th March 1879.—*Held* that such application was barred under art. 179, sch II, Act XV of 1877 KRISTO COOMAR NAG *v* MAHABAT KHAN . . I. L. R., 5 Calc., 595

88 ——— *Appellate order in execution*—The holder of a decree for possession and partition of a share of certain immoveable property, dated the 1 th January 878, applied for execution on the 2nd February 1878. An order was

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

should be effected by lots, and remanded the case for that purpose. The first Court proceeded to carry out the order of the Appellate Court, but eventually struck off the case, on the 15th February 1879, as the decree-holder failed to appear personally when ordered to do so On the 13th September 1881 the legal representative of the deceased decree-holder, who had meantime died, applied, with reference to the order of the Appellate Court dated the 1·th September 1878, to have lots drawn in accordance with that order. *Held*, on the question whether this application was barred by limitation, that, if it were regarded as nothing more than an application for execution of the original decree, it might be barred, inasmuch as it had been made more than three years after the date of the last application, and it was doubtful whether the 2nd clause in the 3rd column of art 179, sch. II of Act XV of 1877, would

fore, so regarding, it was within time HULASI v. MAIKU . . . I. L. R., 5 All. 236

89. ——————— *"Decree"—Order rejecting memorandum of appeal for deficiency of Court fee.*—An appeal from a decree, dated the 16th July 1879, was rejected by the High Court on

(2), that the order of the 11th June 1880, rejecting the appeal on the ground of deficient payment of Court-fee, was equivalent to a decree, and therefore the application, being made not more than three years from the date of that order, was not barred by limitation. RUP SINGH v MUKHRAJ SINGH . . . I. L. R., 7 All. 887

90. ——————— *Application for execution of decree—Order staying execution.*—The plaintiff obtained an *ex-parte* decree on 7th of Feb-

the 19th of December 1877. Previously,—*viz.*, on the 21st of February 1877,—the execution case had been struck off the file. *Held* that, notwithstanding the

LIMITATION ACT, 1877—*continued.*

2 PERIOD FROM WHICH LIMITATION RUNS—*continued.*

application was made more than three years after the decree, and the plaintiff was not entitled to any deduction of the time during which the execution was stayed by order of Court, an application for execution made on the 10th of December 188) was, under art. 179 of Act XV of 1877, not barred, the decree not being final until the order dismissing the appeal on the 19th of December 1877. LUTFUL HUQ v. SUMBHUDIN PATTUCK

[I. L. R., 8 Calc., 248: 10 C. L. R., 143.

91. ——————— *Execution of decree.*—Art. 179, cl. (2), of the Limitation Act (XV of 1877) must be construed as intended to ap-

he ... ied ... he ... ist ... re- ... de-

fendants alone appealed, and their appeal was dismissed in May 1882. In May 1885 the decree-holders ... The application ... imit- ... from ... that ... inas-

much as the purchaser did not appeal from the original decree. *Held* that art. 179 cl (2), of the Limitation Act was applicable, and that the application, being made within three years from the Appellate Court's decree, was not barred by limit-

Zumma v. *Mahomed Syed*, ... and *Ram Lal* v. *Jagannath*, *Weekly Notes, All.*, *1884, p. 138*, relied on. NUR-UL-HASAN v MUHAMMAD HASAN . . I. L. R., 8 All. 573

92. ——————— *Adjudication that execution is barred by limitation—Finality of order—Civil Procedure Code s. 206—Amendment of decree.*—An application to execute a decree passed in April 1880 was made on the 19th February 1884, and rejected on the 26th March 1884 as being beyond time. This order was upheld on appeal in March 1885. While the appeal was pending, the decree-holder in May 1884 applied to the Court of first instance to amend the decree under s. 206 of the ... December 1884 the ap- ... tion ... the ... be ... that ... 1877) ... not ... the ... inal ... ent ... art- ... was ... v.

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

Grija Kant Lahiri, *I. L. R. 8 Calc.*, 51, and *Ram Kirpal v. Rup Kuari*, *I. L. R.*, 6 *All.*, 269, referred to TARSI RAM v. MAN SINGH [I. L. R., 8 All., 492

See DAYA KISHOR v. NANKI BEGAM [I. L. R., 20 All., 304

(*d*) WHERE THERE HAS BEEN A REVIEW.

——— cl. 3 —The provision of the article where there has been a review is opposed to the decisions of CHOWDHRY JUNMENJOY MULLICK v. BISSAMBHAR PANJAH . 5 W. R., Mis., 45

GOUR MOHUN SHAHA v. GOUR MOHUN GHOSE [5 W. R., Mis., 11

but in accordance with most of the decisions.

93. ——— *Rejection of application for review—Time during which review was pending—Application for refund of moneys levied*

such application was pending cannot be excluded in computing the period of limitation for execution of the decree under art. 179 (3) of sch. II of the Limitation Act. *Semble*—An application for refund of moneys levied in execution of a decree subsequently reversed on appeal is not governed by art. 179, but by art. 178 of sch. II of the Limitation Act. KURUPAM ZAMINDAR v. SADASIVA [I. L. R., 10 Mad., 66

94. ——— *Order allowing amendment of a decree—Review of judgment—Code of Civil Procedure (Act XIV of 1882), ss. 623, 624, and 206.*—An order granting an application for amendment of a decree under s. 206 of the Code of Civil Procedure is an order passed upon review of judgment within the meaning of art. 179, sch. II, cl. (3), of the Limitation Act, therefrom an application for execution of a decree within three years from such an order is not barred by limitation. *Kishen Sahai v. Collector of Allahabad*, *I. L. R.*, 4 *All.*, 137, referred to. KALI PROSUNNO BASU ROY v. LAL MOHUN GUHA ROY I. L. R., 25 Calc., 258 [2 C. W. N., 219

95. ——— *Calculation of time where decree has been wrongly varied.*—*Per* SUBRAMANIA AYYAR, J. That where a decree which is at variance with the judgment is brought into conformity with the latter under s. 206 of the Code of Civil Procedure, the date of the rectification is immaterial with reference to the calculation of the

be preferred as commencing from the date of the variation. PARAMESHRAYA v. SESHAGIRIAPPA [I. L. R., 22 Mad., 364

96. ——— *Order amending decree—Compromise after decree—Subsequent application for execution of amended decree.*—After a

the fourth. An application by the second and third defendants for leave to appeal to Her Majesty was withdrawn, the two parties to the compromise having obtained an order for amendment of the decree in its terms. For the execution of the decree against the three defendants, other than the third, as to the proportionate part of the property sued for, and not the subject of the compromise, the decree-holder afterwards obtained an order. This order was reversed by the High Court. Hence this appeal. *Held* that the order directing the amendment of the decree in the terms of the compromise was beyond the powers of the High Court, and was without operation either in favour of or against those defendants who had not been parties to the petition for that amendment. *Held* also on the decree-holder's petition for execution of the decree that the period of limitation commenced from the date of the primary, and not of the amended, decree of the High Court. Execution was therefore barred by limitation. Instead of attempting the alteration in the decree, the High Court could properly have made the compromise a rule of Court, and have stayed all proceedings against the defendant who was a party to it, except for the purpose of enforcing it against him. KOTAGIRI VENKATA SUBBAMMA RAO v. VELLANKI VENKATARAMA RAO [I. L. R., 24 Mad., 1 L. R., 27 I. A., 197 4 C. W. N., 725

(*e*) WHERE PREVIOUS APPLICATION HAS BEEN MADE.

97. ——— cl. 4—*Decree not liable to be enforced.*—S. 20, Act XIV of 1859, was not applicable to a decree until the liability under it has become enforceable by process of execution. GOPALA SETTY v. DAMODARA SETTY 4 Mad., 173

98. ——— *Application for execution of decree—"Suit."*—*Per* GARTH, C.J., and MARKBY and AINSLIE, JJ. (KEMP and MACPHERSON, JJ., dissenting).—The periods of limitation prescribed in sch. II of Act IX of 1871 are to be computed subject

99. ——— *Application to execute decree.*—Where an application was made and proceedings taken to enforce or keep in force a decree, limitation runs from the date of such application, not from

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

the date of the proceedings. FAEZ BUKSH CHOWDHRY *v.* SADUT ALI KHAN . 23 W. R., 282

The contrary was held under Act XIV of 1859, s. 2.

See RAMANUJA AIYANGAR *v.* VENKATA CHARRY [4 Mad., 260

100. ——— *Application by Government for execution of decree.*—Under Act IX of 1871, Government is bound to make an application for execution within the same time as any other person. COLLECTOR OF BEERBHOOM *v.* SREEHURRY CHUCKERBUTTY . . . 22 W. R., 512

101. ——— *Application for execution of decree—Presentation of application to enforce decree.*—*Held* by the Full Bench that the date on which an application for the execution of a decree is presented, and not any date on which such application may be pending, is "the date of applying" within the meaning of art. 167, sch. II of Act IX of 1871. FAKIR MUHAMMAD *v.* GHULAM HUSAIN . . . I. L. R., 1 All., 580

102. ——— *Application for execution of decree.*—If a decree has once been allowed to expire, no subsequent application, although made *bonâ fide*, can revive it. MUNGOL PRASHAD DICHIT *v.* SHAMA KANTO LAHORY CHOWDHRY [I. L. R., 4 Calc., 708

S. C. ISHANA DABIA *v.* GRIJA KANT LAHIRY CHOWDHRY . . . 3 C. L. R., 572

But held by the Privy Council in appeal that, although the execution of a decree may have been actually barred by lapse of time at the date of an application made for its execution, yet if an order for such execution has been regularly made by a competent Court having jurisdiction to try, whether it was barred by time or not, such order, though erroneous, must, if unreversed, be treated as valid. MUNGUL PERSAD DICHIT *v.* GRIJA KANT LAHIRI [I. L. R., 8 Calc., 51
L. R., 8 I. A., 123 : 11 C. L. R., 113

103. ——— *Admission of previous application by competent Court.*—In an application for execution of a decree, it was held that, whether rightly or wrongly, a previous application having been admitted and registered and attachment having been ordered to issue, it was not open to the judgment-debtor to question the validity of the proceedings on the ground of the execution being barred by limitation. *Mungal Pershad Dichit v. Girja Kant Lahiri, I. L. R., 8 Calc., 51 : L. R., 8 I. A., 123*, referred to. NORENDRA NATH PAHARI *v.* BHUPENDRA NARAIN ROY I. L. R., 23 Calc., 374

104 ——— Application for exe-

LIMITATION ACT, 1877—*continued.*

4. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

ABDUL HEKIM *v.* ASSEBUTOOLLAH 25 W. R., 94

NILMONEY SINGH DEO *v.* RAMJEEBUN SURKEL [8 C. L. R., 335

WODOY TARA CHOWDHRAIN *v.* ABDOOL JUBBUR CHOWDHRY . . . . 24 W. R., 339

105. ——— *Civil Procedure Code (Act XIV of 1882), s. 230.*—On 15th February 1872 the plaintiff obtained against the defendant a decree for possession upon his mortgage, and in attempting to take possession was obstructed by *N*,

any further. In 1884 the defendant paid off *N*'s mortgage, and on 27th August 1885 the plaintiff presented an application for execution of his decree of 1872. On reference to the High Court,—*Held* that the execution of the decree was barred, no application for execution having been made since 1873. The previous application for execution not having been made under s. 230 of the Civil Procedure Code (Act XIV of 1882), the general law of limitation, as laid down in art. 179 of Act XV of 1877, governed the case. ANNAJI APAJI *v.* RAMJI JIVAJI [I. L. R., 10 Bom., 348

106. ——— *Application for execution made within time of a previous barred application in which execution was allowed.*—An application for the execution of a decree, though made within three years from the date of a previous application, was barred, under s. 20 of Act XIV of 1859, if the previous application were barred, even though execution was allowed to issue on such application. GOPAL GOVIND *v.* GANESHDAS TEJMAL [8 Bom., A. C., 97

107. ——— *Application for execution of decree already barred—Limitation Acts (IX of 1871), sch. II, art. 167 ; (XV of 1877) ss. 2, 3.*—No process can legally issue upon an application for the execution of a decree already barred by limitation, nor can an application made under such circumstances be a valid application, or one which under the Act would give the execution-creditor a fresh period of limitation. SHUMBHUNATH SHAHA *v.* GURUCHURN LAHIRI . I. L. R., 5 Calc., 894 [6 C. L. R., 437

108. ——— *Application made within three years of previous barred application—"Application in accordance with law."*—An application for execution of decree was made in 1885, and the second in 1891. The latter was at first allowed, but subsequently struck off for some default of the applicant. The third application was made in 1893. *Held* that the second application having been made at a time when it was barred by reason of the three years' period having been exceeded, the third was barred, though presented within three years of the

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

BHAGWAN JETHIRAM *v.* DHONDI [I. L. R., 22 Bom., 83

109. ——————— *Decree for possession and mesne profits reversed as to possession—Decree partly in favour of plaintiff and partly in favour of defendant—Application for restitution of possession—Civil Procedure Code (Act XIV of 1882), s. 583.*—*A* obtained a decree against *B* for possession and for R27 mesne profits. In execution he got possession On appeal, however, the decree was

RAM CHANDRA MURDISHVAR [I. L. R., 22 Bom., 998

110. ——————— *Time runs from*

111. ——————— *Execution of decree*

112. ——————— *Application within time.*—Where a Judge finds that an application for execution is within time, and there is no appeal from

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

his finding, his successor is not justified in going behind his order. DHEERAJ MAHTAB CHUND *v.* MOORLEEDHUR GHOSE . . 15 W. R., 67

113. ——————— *Suit on decree—Steps to enforce decree.*—The plaintiff sued to recover ar-

any steps to enforce it for some four years subsequent to the date of the decree. JAI CHAND *v.* BEHARI . . . . . 7 N. W., 177

114. ——————— *Application for execution of decree.*—Application for execution of a

cation was in time, but the second application was barred by s. 20, Act XIV of 1859 VIRABHADRA RAU *v.* RAMAIYA *alias* BAPPAUTULA [4 Mad., 148

115. ——————— *Obligation to show*

KOOL CHUNDER CHUCKERBUTTY *v.* KUMUL CHUNDER ROY . . . 6 W. R., Mis., 17

116. ——————— *Application within time.*—An application made on the 8th January 1875 to execute a decree, the last preceding application having been made on the 8th January 1872, was held to be within the time allowed by art. 167, sch. II of Act IX of 1871. DHONESSUR KOOER *v.* ROY GOODER SAHOY . . I. L. R., 2 Calc., 336

(*f*) DECREES FOR SALE.

117. ——————— *Decree for sale on a mortgage—Order absolute for sale—Transfer of Property Act (IV of 1882), ss. 88 and 89.*—The period of limitation for execution of a decree for sale under s 88 of the Transfer of Property Act begins to run from the date of the granting of an order absolute for sale under *s. 89 of the Act,* without which order the decree cannot be executed, and not from the date of the decree itself. *Oudh Behari Lal v. Nageshar Lal, I. L. R., 13 All., 278,* and *Mulchand v. Mukta Pal Sing, Weekly Notes, All. (1896), 100,* referred to MAHABIR PRASAD *v.* SITAL SINGH . . I. L. R., 19 All., 520

118. ——————— *Decree for sale on mortgage—Order absolute for sale—Transfer of Property Act (IV of 1882), s. 89.*—An application for an order absolute for sale under s. 89 of the Transfer of Property Act, 1882, is an application to

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*concluded.*

which art. 179 of the second schedule to the Indian Limitation Act, 1877, applies. *Oudh Behari Lal* v. *Nageshar Lal, I. L. R., 13 All., 278,* referred to. *Ranbir Singh* v. *Drigpal Singh, I. L. R., 16 All., 23,* overruled. CHUNNI LAL *v.* HARNAM DAS [I. L. R., 20 All., 302

119. ———— *Transfer of Property Act (IV of 1882), s. 87—Application for order absolute for foreclosure.*—An application for an order under s 87 of Act IV of 1882 is, like an application for an order under s. 89 of the said Act, subject to the limitation prescribed by art. 179 of the second schedule to Act XV of 1877. *Oudh Behari Lal* v. *Nageshar Lal, I. L. R., 13 All., 278,* and *Chunni Lal* v. *Harnam Das, I. L. R., 20 All., 302,* referred to. PARMESHRI LAL *v.* MOHAN LAL . . . . I. L. R., 20 All., 357

3. NATURE OF APPLICATION.

(*a*) GENERALLY.

120. ———— *"Proceeding" under Act XIV of 1859, s 20.*—The word "proceeding" in s. 20, Act XIV of 1859, meant a proceeding not barred by the law of limitation, and under which process of execution might lawfully have issued if the proceeding had been opposed. BISSESSUR MULLICK *v.* DHIRAJ MAHTAB CHAND [B. L. R., Sup. Vol., 967: 10 W. R., F. B., 8

RADHOO CHOWDHRAIN *v.* HEET LALL ROY [11 W. R., 209

121. ———— *Application to keep decree in force—Intention to enforce it.*—In order to keep a decree alive, it was, under s 20, Act XIV of 1859, not necessary that the application for execution should be made with the intention of enforcing the decree at that time. All that the section required was that some proceeding should have been taken to enforce the decree or to keep it in force within three years KONDARAJU VENKATA SUBBAIYA *v.* RAMA KRISHNAMMA *alias* URUPKRISTNAIYA 4 Mad., 75

KULLYAN SINGH *v.* BAHADUR SINGH [Agra, F B., 163: Ed. 1874, 122

The proceeding need not be successful. KALEE KISHORE BOSE *v.* PROSONO CHUNDER ROY [10 W. R., 248

AKBER GAZEE *v.* NUFEEZUN . 8 W. R., 99

ESHAN CHUNDER BOSE *v.* JUGGOBUNDHOO GHOSE [8 W. R., 98

But *see* LALLA BISHEN DYAL SINGH *v.* RAM SUNKUR TEWAREE . . 6 W. R., Mis., 38

and JUNARDUN DOSS MITTER *v.* RAJAH ROOKNEE BULLUB . . . . 6 W. R., Mis., 48

The proceedings could be withdrawn when they appeared to be useless, and it was not necessary to prosecute them to a termination. KULLYAN SINGH *v.* BAHADUR SINGH [Agra, F. B., 163: Ed. 1874, 122

LIMITATION ACT, 1877—*continued.*

3. NATURE OF APPLICATION—*continued.*

122. ———— *Execution of decree—Limitation—Effect of dismissal of application for execution duly made.*—If an application for execution of a decree is duly made so as to satisfy the terms of art. 179, paras. 4 and 5 of sch II of Act XV of 1877, but is dismissed, such dismissal does not prev[illegible] point of time [illegible] limitation. [illegible] RAO RAMCHA[illegible]

123. ———— *Civil Procedure Code (Act X of 1877), s. 374.*—The rule laid down in s. 374 of the Code of Civil Procedure (Act X of 1877), that where a suit is withdrawn with leave to bring a fresh suit, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought, applies to applications for execution; and therefore in counting the time of three years prescribed by the Limitation Act XV of 1877, sch. II, art. 179, cl. 4, an application allowed to be withdrawn must be discarded as if it had never been presented. PIRJADE *v.* PIRJADE . I. L. R., 6 Bom., 681

124. ———— *Execution of decree* —[illegible] at [illegible] ho [illegible] 18 [illegible] thereof, but it appeared that in certain particulars the decree required correction, and it was therefore [illegible] for the decree- [illegible] 1883. *Held* that, the application of the 20th July [illegible] taken back by [illegible] *tambi Shervai, I. L. R., 6 Mad., 250,* dissented from. *Pirjade* v. *Pirjade, I. L. R., 6 Bom., 681,* referred to. KIFAYAT ALI *v.* RAM SINGH [I. L. R., 7 All., 359

125. ———— *Application to execute decree—Abandonment of former application.*— [illegible] Court to attach [illegible]

LIMITATION ACT, 1877—*continued.*

3. NATURE OF APPLICATION—*continued.*

virtually an abandonment of the two original applications which were virtually struck off, and that the last application was the one which came within the meaning of the Limitation Act, 1871, art 167. LALA HURRE SUNKUR SAHOY v. KRISHNA KANT DUTT . . . . . . 25 W. R., 106

126. ———————— *Application for execution—Withdrawal of application—Subsequent application for execution more than three years after date of last proceeding—Civil Procedure Code (Act XIV of 1882), s. 374.*—The plaintiff obtained a decree in 874, and applied for its execution, first on the 4th of August 1875, then on the 6th of July 1878, and again on the 23rd of July 1880.

XIV of 1882 —that where a suit is withdrawn with leave to bring a fresh suit, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought—does not apply to applications for execution. *Pirjade* v. *Pirjade, I. L. R., 6 Bom., 651,* dissented from. TARACHAND MEGRAJ v. KASHINATH TRIMBAK [I. L. R., 10 Bom., 62

127.

defects, the Court returning the application, but

precluded from again applying for execution; but that, even assuming that permission to apply again could be inferred from the action of the Court in

v. SITA RAM . . . I. L. R., 10 All., 71

128. ———————— An application for execution cannot be thrown out summarily as barred

129. ———————— *Obligations of Court and creditor to issue execution.*—Though it is the duty of the Court to issue process after application has been made for execution yet the law fully intends that when the decree-holder sees that the Court has

130. ———————— *Question of bonâ fides—Act XIV of 1859, s 20*—Under Act XIV of

TABBUR SINGH v. MOTEE SINGH . 8 W. R., 306

S. C. on review . . . . 9 W. R., 443

GOLAM ASGAR v. LAKHIMANI DEBI [2 B. L. R., Ap., 24

GUNGA NARAYAN CHOWDHRY v. PHUL MOHAMMED SIRKAR . . . . . 2 B. L. R., Ap., 45

BHAROTEA DEBEA v. KURRONAMOYEE DOSSIA [10 W. R., 229

KALEE KISHORE BOSE v. PROSONO CHUNDER ROY . . . . . . 10 W. R., 248

It was doubted whether the question of *bonâ fides* was one of law or of fact. TABBUR SINGH v. MOTEE SINGH . . . . 9 W. R., 443

fide. TABBUR SINGH v. MOTEE SINGH [9 W. R., 443

DHERAJ MAHTAB CHUND v. MODHOO SOODUN BONNERJEE . . . . . 15 W. R., 162

LOOTF ALI v. ABOO BIBEE . 15 W. R., 203

AMEERUN BIBEE v. SHIBPERSHAD THAKOOR [8 W. R., 199

SEITH KISHEN CHAND v. KOUR ASKUNDER GIR [1 N. W., 95: Ed. 1873, 145

And then, of course, the decree-holder had an opportunity of explaining fully and clearly all his acts. SEETANATH MUNDLE v. ANUND CHUNDER ROY [15 W. R., 5

UDDOYTO CHURN SAHOO v. RAM DHUN ROY [16 W. R., 296

As to what was evidence of *bonâ fides* or the contrary:—

KRIPA MOYEE DOSSEE v. POORUN CHUNDER ROY [11 W. R., 403

TITOORAM BOSE v. TARINEECHURN GHOSE [15 W. R., 127

RAM SOONDAR v. RAM CANTO . 11 W. R., 8

and RAM DHUN GOOR v. GOOROODOSSEE DOSSEE [13 W. R., 40

BHAROTEA DEBEA v. KURRONA MOYEE DASSIA [10 W. R., 229

LIMITATION ACT, 1877—*continued.*

3. NATURE OF APPLICATION—*continued.*

TARUCK CHUNDER CHUCKERBUTTY *v.* HURO CHUNDER CHUCKERBUTTY . 15 W. R., 473

RAJ COOMAR BABOO *v.* JUDOO BUNGSHEE [14 W. R., 112

AMEER ALI *v.* SAHIB SINGH . 15 W. R., 530

IN THE MATTER OF KALEEDASS GHOSE [15 W. R., 356

KISTO KANT BURAL *v.* NISTARINEE DEBIA [8 W. R., 268

In judging of the *bonâ fides* of proceedings to obtain execution of a decree, the whole course of those proceedings was to be regarded. The fact that unexplained delays have occurred during the proceedings in execution of the decree, or that some of the proceedings were ineffectual, is not necessarily evidence of a want of *bonâ fides*. BENODERAM SEN *v.* BROJENDRO NARAIN ROY

[13 B. L. R., P. C., 169 : 21 W. R., 97

S. C. in lower Court, BROJENDRO NARAIN ROY *v.* BENODE RAM SEIN . . 11 W. R., 269

Under the present Act, no question of *bonâ fides* arises.

131. ———— *Sufficiency or otherwise of mere applications—Act XIV of 1859, s. 20.*—Under Act XIV of 1859, there were contrary decisions as to whether a mere application for execution was a proceeding to enforce the decree. Cases which held it insufficient were—

CHUNDER COOMAR ROY *v.* SHURUT SOONDERY DEBIA . . . . . 6 W. R., Mis., 37

GOSSAIN GOPAL DUTT *v.* COURT OF WARDS [21 W. R., 418

IDOO *v.* BESHAROOLLA . 2 W. R., Mis., 10

RAJ BULLOB BUYE *v.* TARANATH ROY [3 W. R., Mis., 2

SHEO PERTAB LAL *v.* ISSUR ROY [5 W. R., Mis., 23

See also ABDOOL HEKIM *v.* ASEENTOOLLAH [25 W. R., 94

Contra, GOUR MOHAN BANDOPADHYA *v.* TARA CHAND BANDOPADHYA

[3 B. L. R., Ap., 17 : 11 W. R., 567

VARADA CHETTY *v.* VAITAPURY MUDALI [4 Mad., 151

LUCHMUN SINGH *v.* NARAIN . 2 N. W., 185

CHUMUN BHUGUT *v.* MUDUN MOHAN [2 N. W., 186

HUR SAHOY SINGH *v.* GOBIND SAHOY [21 W. R., 244

See also TABBUR SINGH *v.* MOTEE SINGH [9 W. R., 443

MAHOMED BAKER KHAN *v.* SHAM DEY KOER [12 W. R., 2

RAJEEB LOCHUN SAHA CHOWDHRY *v.* MASEYK [18 W. R., 193

An application for execution of a decree followed by issue of notice was held to be a proceeding to keep alive the decree. LUCKEE NARAIN CHUCKERBUTTY *v.* RAM CHAND SIRCAR . 6 W. R., Mis., 63

SHOO CHAND CHUNDER *v.* GRANT 7 W. R., 10

An application by a decree-holder for issue of notice and for enforcement of the decree by possession was held to be a proceeding to keep the decree in force. MOOKTA KASHEE DABEE *v.* GUNGA DASS ROY . . . . . 14 W. R., 483

Also an application for execution, and order to deposit tullubana followed by such deposit, and service of notice, was sufficient. TRILOCHUN CHATTERJEE *v.* RADHAMONI DOSSEE . 6 W. R., Mis., 74

132. ———— and s. 19—*Execution of decree, Application for.*—The mere payment of a Court-fee in connection with execution proceedings, with a view to obtain leave to bid for property then up for sale in execution of a decree, does not constitute "the taking of some step in aid of execution" within the meaning of art. 179, sch. II of the Limitation Act (Act XV of 1877), so as to prevent the execution of the decree being barred within three years from the date of such payment. TOREE MAHOMED *v.* MAHOMED MABOOD BUX

[I. L. R., 9 Calc., 730 : 13 C. L. R., 91

133. ———— *Application made to keep in force decree.*—A judgment-creditor, on finding that his judgment debtor has no property on which he can lay hands for the purposes of execution, can always file an application simply to keep in force his decree. NILMONEY SINGH DEO *v.* NILCOMUL TUFFADAR . . . . 25 W. R., 546

134. ———— *Nature of application under s. 179, cl. 4, of the Limitation Act, 1877.*—To satisfy the requirements of art. 179 (4) of sch. II of the Limitation Act (XV of 1877), there must be [illegible] and time runs [illegible] der [illegible] er, [illegible] not necessarily be in writing; where the [illegible] require a writing, an oral application satisfies its requirements. Where an order made in aid of execution is of such a nature that the Court would not [illegible]

KASHINATH VIDYADHAR GOSAVI [I. L. R., 23 Bom., 723

135. ———— *Civil Procedure Code, ss. 231, 232, 623—Joint decree-holders—Assignment by operation of law of a share in a decree.*—A Hindu obtained in 1878 a decree for [illegible] he now applied in [illegible] it- [illegible] to [illegible] ed application for execution in 1888 was held to be [illegible]

LIMITATION ACT, 1877—*continued.*

3. NATURE OF APPLICATION—*continued.*

as to the effect of expl I, art. 179 (as to joint decrees): the application by the son for execution as transferee of part of the decree, having been an application in accordance with law, was sufficient to keep the decree alive. RAMASAMI *v* ANDA PILLAI [I. L. R., 14 Mad., 252

Reversing on review the decision in RAMASAMI *v.* ANDA PILLAI . I. L. R., 13 Mad., 347

136. ———————— *Civil Procedure Code (Act XIV of 1882), ss. 232, 248—Application for execution by transferee of decree—Benamidar.*—The words "in accordance with law" in art. 179 of sch. II of the Limitation Act mean in accordance with the law relating to execution of decrees. Under s. 232 of the Civil Procedure Code, the Court executing the decree after giving notice to the decree-holder and judgment-debtor and hearing their objections if any, has an absolute discretion to allow or to refuse to allow, execution to proceed

See MANIKKAM *v.* TATAYYA [I. L. R., 21 Mad., 388

137. ———————— *Application in accordance with law—Succession Certificate Act (VII of 1889), s. 4—Application for execution by legal representative of decree-holder without certificate.*—An application for execution of a decree made by the legal representatives of a deceased decree-holder, without the production of a certificate

LIMITATION ACT, 1877—*continued.*

3. NATURE OF APPLICATION—*continued.*

under the Succession Certificate Act (VII of 1889), is nevertheless one made "in accordance with law" within the meaning of art 179, cl 4, of the Limitation Act (XV of 1877). BALKISHAN SHIWA BAKAS *v.* WAGARSING . . I. L. R., 20 Bom., 76

138 ———————— *Application in accordance with law—Civil Procedure Code (Act XIV of 1882), ss. 365, 366—Succession Certificate Act (VII of 1889), s. 4, cl b and (iii).*—On the 10th January 1890 the heirs of a deceased decree-holder

CHOWDHRY *v.* ABDOOL AZIZ [I. L. R., 20 Calc., 755

139. ———————— *Application for restitution under a decree—Civil Procedure Code (1882), s. 583—Period of limitation.*—Applications made to obtain restitution under a decree in accordance with Civil Procedure Code, s 583, are proceedings in execution of that decree, and are governed by the Limitation Act, sch. II, art 179 VENKATYA *v.* RAGAVACHARLU I. L. R., 20 Mad., 448

(*b*) IRREGULAR AND DEFECTIVE APPLICATIONS.

140. ———————— *Irregular application for restoration of execution case.*—Where certain execution-proceedings had been struck off the

141. ———————— *Application for execution of decree irregularly made.*—Where an

purchaser of a decree was rejected on account of the applicant's failure to produce evidence, as he was

LIMITATION ACT, 1877—*continued.*

3. NATURE OF APPLICATION—*continued.*

August, after filing the list, applied for the attachment and sale of such properties. The judgment debtor contended that execution was barred by limitation. *Held* that the omission to file on the 8th July the list describing specifically the properties

[I. L. R., 14 Calc., 124

See the Full Bench case of ASGAR ALI *v.* TROILOKYA NATH GHOSE I. L. R., 17 Calc., 631

159. ——— *Defective application returned for amendment—Civil Procedure Code (1882), ss. 235 and 245.*—In execution of a decree, the judgment-debtor's property was put up to sale on the 15th December 1890, but no sale took place, and the case was struck off. On the 7th October 1893, an application for execution was presented, but all the particulars required under s. 235 of the Civil Procedure Code not having been given, the applica-

I. L. R., 16 Mad., 142, and *Ramanadan v. Periatambi, I. L. R., 6 Mad., 250,* dissented from. GOPAL SAH *v.* JANKI KOER I. L. R., 23 Calc., 217

160. ——— *Application for execution of decree not materially defective—Application returned for amendment—Code of Civil Procedure (Act XIV of 1882), ss. 235 and 248.*—The plaintiff obtained a joint decree ...

... was affirmed in all other respects. A second appeal by the plaintiff from the decree of the Appellate Court was dismissed by the High Court on 9th July 88‥. An application for execution of the decree was made by the plaintiff on 7th July 1891 within three years from the date of the final decree, dated 9th July 1888. The prayer was for issue of notice on the judgment-debtor for delivery of possession, for attachment and sale of certain immoveable properties, for realization of costs and damages decreed. Notice under s. 248 of the Code of Civil Procedure was issued on the judgment-debtors on 8th September 1891. The judgment debtors objected that, as the application did not contain the right number of suit and date of decree, it was not in accordance with law, and as no other application had been made within three years from date of decree, the execution was barred by limitation. *Held* that material defects only could vitiate an application, and as the defects in the present application for execution were not material, it was not barred by limitation. *Asgar Ali v. Troilokya Nath Ghose, I. L. R.* ... *Koer,* ... GOPAL C ...

2 C. W. N., ...

161. ——— *Application for execution giving wrong date of decree—Amendment allowed after limitation—Amendment relating back to former applications.*—J obtained a decree on two mortgage-bonds on the 2‥th November 1885. That decree was set aside, but another decree was passed in his favour on the 21st of September 1886. The decree-holder made several applications to execute the decree, but in each described the decree as of the 25th November 1885. On the third application the judgment-debtor objected that the application was time-barred. The application was ...

applications, and execution of the decree was ... time-barred *Ajudhia Ram v. Muhammad Munir, Weekly Notes, All., 1893, p 112,* followed. JIWAT DUBE *v.* KALI CHARAN RAM

[I. L. R., 20 All., 478

162. ——— *Application in accordance with law.*—In execution of a decree, dated 7th May 1877, an application was made under a general power-of-attorney from *A* and *B*, the decree-holders, on the 19th February 1878. *B* died on the 12th February, but this fact was unknown to the pleaders who made the application. The next application was made on the 28th July 1880. On an objection taken that the latter application was barred ... the former applica- ...

1877. AMIRUNNISSA CHOWDHRANI *v.* AHSANULLAH CHOWDHRI 13 C. L. R., 18

163. ——— *Execution of decree—Amendment of revenue record—Application for execution not "in accordance with law."*—The holders of a decree made by a Civil Court, which directed, *inter alia,* that they should be maintained in possession of a share of a village, by cancelment of

LIMITATION ACT, 1877—*continued.*

3. NATURE OF APPLICATION—*continued.*

the order of the settlement officer directing the entry of the judgment-debtor's name in the revenue registers in respect of such share, applied for execution of such decree, improperly asking the Court executing the decree to order the Collector to amend such entry by the substitution of their names for

which would keep such decree in force MUHAMMAD UMAR *v.* KAMILA BIBI . I. L. R., 4 All, 34

164. ——————— *Informal application*

directing the petitioner to amend the application within four days by giving the correct number. That order was not complied with, and the petition was left on the file of the Court without being dis-

eight days. The required amendment was made, and the application again placed on the file of the Court on the 22nd September. On an objection being

ing sum of R90, to be paid in 1882, was filed in Court on 20th November 1880. In 1883 the decree-

not proceeded with through some default of the decree-holder On 4th June 1885 the decree-holder made the present application, praying that under ss 261 and 262 of the Civil Procedure Code (Act XIV of 1882) an order directing the judgment-debtor to execute a bond in terms of the conciliation agree-

167. ——————— *Decree in favour of firm in name of agent—Application for execution by another agent.*—A decree was passed in favour of a firm in the name of an agent of the firm The second and subsequent applications for execution were made by an agent of the firm other than the agent named in the decree. Certain persons, alleging that they were the proprietors of the firm, applied for execution of the decree. The application was refused, on the ground that the proceedings in execution taken by the last-mentioned agent were invalid, and execution of the decree was therefore barred by limitation. *Held* that such proceedings, however irregular, were not invalid. LACHMAN BIBI *v.* PATNI RAM . . I. L. R., 1 All, 510

168. ——————— *Legal representative applying for execution without her name being on the record.*—*A* obtained a decree against *B* in June 1879, and in execution thereof some time in 1879 attached certain moneys in Court which belonged to

LIMITATION ACT, 1877—*continued.*

3 NATURE OF APPLICATION—*continued.*

the 22nd June 1881, the widow of *A*, who had taken out probate, applied to withdraw this money from Court, and on the 1st of April 1882 applied for a copy of the decree obtained by *A* for the purposes of execution. At the time of these three applications the widow had not applied for substitution of her name on the record in the place of her deceased ... ap- ... cord, ... was ... under ... INGA PERSHAD BHOOMICK *v.* DEBI SUNDARI DABEA [I. L. R., 11 Calc., 227

169. ——— *Applications for* ...

MADHO PRASAD *v.* KESHO PRASAD [I. L. R., 19 All., 337

170. ——— *Application for execution against wrong person—Decree against a minor—Application for execution against minor's mother personally, but not as his guardian.*—On the 31st July 1879 a decree was passed against *N*, a minor, represented by his mother and guardian *C*. In December 1880 the first application for execution was made. Through mistake execution was sought against *C* herself as 'widow of *B*,' and not as guardian of the minor *N*. That application was ...

171. ——— *Application for relief outside the decree—"Step in aid of execution."*—The application for execution contemplated in clause ...

LIMITATION ACT, 1877—*continued.*

3. NATURE OF APPLICATION—*concluded.*

... put in possession of a certain house which was not ...

execution, of the decree, inasmuch as ... what the decree did not give. It could not therefore keep the decree alive under art. 179, sch. II of the Limitation Act (XV of 1877). PANDARINATH BAPUJI *v.* LILACHAND HATIBHAI [I. L. R., 13 Bom., 237

4. STEP IN AID OF EXECUTION.

(a) GENERALLY.

172. ——— *Proceeding to enforce decree by interested party.*—In order to enforce, or to keep in force, a decree, it was not necessary that the proceeding alluded to in s. 20, Act XIV of 1859, should have been taken by the particular party seeking to execute: it was sufficient if any one interested had taken any proceeding. NARAIN ROY *v.* SREENATH MITTER . . . 9 W. R., 485

173. ——— *Right to enforce decree.*—In order to keep a decree alive, s. 20 of Act XIV of 1859 does not require more than that some actual proceeding should be taken, which, if successful, would result in the discharge or partial discharge of the judgment-debt. The proceeding need not be by a person legally and rightfully entitled to the decree. NADIR HOSSEIN *v.* PEAROO THOTIDARINEE 14 B. L. R., 425 note: 19 W. R., 255

174. ——— *Defect in application for execution.*—Where there has been in fact an ... entitled ... d of ... Act, ... ent- ... tion ... [I. L. R., ... 76

175. ——— *Application not by ... decree holder in the record—Application to execute* ... he decree- ... considered ... ROY *v.* DOOLLA ROY ... W. R., 10

176. ——— *Proceedings to keep decree in force.*—A decree was obtained on 6th

June 1861, and in February 1864 a pretended pur-

point for limitation. DENONATH CHUCKERBUTTY *v.* LALLIT COOMAR GANGOPADHYA
[I. L. R., 9 Calc., 633 : 12 C. L. R., 146

LIMITATION ACT, 1877—*continued.*
4. STEP IN AID OF EXECUTION—*continued.*

DHURY. GOUR SUNDER LAHIRI *v.* HAFIZ MAHAMED ALI KHAN . . I. L. R., 16 Calc., 355

See BALKISHEN DAS *v.* BEDMATI KOER
[I. L. R., 20 Calc., 388

179. ——————— *Proceeding to enforce decree.*—Steps taken towards placing the assignee of a decree in the position of the original

180. ——————— *Decree—Application to enforce decree—Application by heir of deceased decree-holder to substitute his name on the record.*

application of the 3rd January 1874. GOVIND SHANBHOG *v.* APPAYA . I. L. R., 5 Bom., 246

181. ——————— *Dispute between par-*

See BRIJONATH CHOWDHRY *v.* LALL MEFAH MUNNEEROOSEE . . . 14 W. R., 391

The proceeding must be one against the judgment-debtor. JADO LALL *v.* RADHA KISSEN MITTER
[17 W. R., 99

(*b*) STRIKING CASE OFF THE FILE, EFFECT OF.

182. ——————— *Striking case off the file—Proceeding to enforce decree.*—Striking a case

LIMITATION ACT, 1877—*continued.*

4 STEP IN AID OF EXECUTION—*continued.*

off the file is not an effectual proceeding to keep a decree in force under the Law of Limitation. MUDUN BHUKUT v. DOOAB BHARATEE . 8 W. R., 320

183. ———— *Striking case off the file*—The mere pendency of an execution case struck off the file for want of prosecution, or the striking such case off the file, is not a proceeding within the meaning of s. 20, Act XIV of 1859. RAM SAHAI SING v. SHEO SAHAI SING. GURUDAS AKHULI v. GOBIN NAIK
[B. L. R., Sup. Vol., 492
1 Ind. Jur., N. S., 421: 6 W. R., Mis., 98

184. ———— *Consent to striking case off the file.*—Consent of the decree-holder to the striking off of an attachment is not a proceeding to enforce a decree, but a relinquishment. TEILEY v. PEET SINGH . Agra, F. B., Ed. 1874, 117

185. ———— *Striking off execu-*

PATIL . . . . 4 Bom., A. C., 86

186 ———— *Striking off execution proceedings*—A decree was passed in 1850, and was in force in 1859, when Act XIV of that year was passed. Between August 1850 and 25th April

25th April 1864 another petition was filed, and notice was served on the debtor. *Held* that at that time the petition for execution was barred by limitation. The decree was not kept alive by the petitions of May 1861 and August 1862, which were struck off in default. SATYASARAN GHOSAL v. BHAIRAB CHANDRA BRAHMO
[2 B. L. R., A. C., 198: 11 W. R., 80

Affirming the decision of the High Court in SUTTO CHURN GHOSAL v. BHYRUB CHUNDER BROHMO . . . . . 9 W. R., 565

187. ———— *Striking off execution proceedings—Bond fide proceedings to keep decree in force.*—A decree was obtained on 16th

188. ———— *Striking off execution proceedings—Boná fides.*—Where the representatives of a deceased decree-holder applied for execution of his decree, and were directed to furnish proof that they were the representatives of the deceased, and did so, and then their execution case was struck off the file,—*Held* that the steps taken by them were *boná fide* steps taken to keep the decree alive. ADINA BIBI v. SURUBUNNISSA BIBI
[3 B. L. R., Ap., 143

189 ———— *Striking off execution proceedings—Proceeding to enforce decree.*—Application for the execution of a decree was made

[I. L. R.

190. ———— *Striking off execution of* ... a decree-holder ... and the 3rd of ... the judgment- ... tioned date the ... and the decree- ... that length of ... ranted, and the ... off the file. ... 25th February ... in applied for ... of 3rd March 1875 was in fact a step taken in aid of execution of the decree, and that the application of 25th February 1878 was therefore, under Act XV of 1877, sch. II, art. 179, cl. 4, within time. RAJLUKHY DASSEE v. RASH MUNJURY CHOWDRAIN . 5 C. L. R., 515

191. ———— *Application to strike off pending execution with liberty to make fresh application—Application made before Act VI of 1892.*—*Held* that an application made before the passing of Act VI of 1892 by a decree-holder to the Court executing the decree to strike off a pending application for execution with liberty to make a fresh application for execution of the same decree was an application in accordance with law to take a step in aid of execution of the decree within the meaning of Act XV of 1877, sch. II, art. 179, cl. 4. RAM NARAIN RAI v. BAKHTU KUAR
[I. L. R., 16 All, 75

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

(c) RESISTANCE TO LEGAL PROCEEDINGS.

192. ———— *Proceedings to enforce decree.*—Resistance to legal proceedings taken by another person counted as a proceeding for the purposes of s. 20, Act XIV of 1859. KALEE KISHORE BOSE *v.* PROSONO CHUNDER ROY [10 W. R., 248

193. ———— *Continuance of contest between parties.*—So long as an actual *bonâ fide* contest was going on in Court between a decree-holder and the judgment-debtor as to the judgment, there was a pending "proceeding" within s. 20, Act XIV of 1859, and the period of limitation was to be computed from the Court's decision. The decision in the case of *Ram Sahai Sing v. Sheo Sahai Singh, B. L. R., Sup.* [illegible]

CHOTAY LAL *v.* RAM DYAL .2 N. W., 402

MODHOO SOODUN MOOKERJEE *v.* KIRTEE CHUNDER GHOSE . . . 18 W. R., 7

194. ———— *Resisting claim to attach property.*—*Bonâ fide* proceedings in resistance of a claim to attach properties were proceedings to enforce a decree within the meaning of s 20 of Act XIV of 1859. BECHARAM DUTTA *v.* ABDUL WAHED . . . I. L. R., 11 Calc., 55

195. ———— *Resisting appeal against decree*—Resisting an appeal against a decree (which appeal was eventually compromised) was a proceeding, within the meaning of s 20, Act XIV [illegible]

RAM RUTTUN BANERJEE *v.* AMEEROOLMOLK BUNWAREE GOBIND . . . 6 W. R., Mis., 95

196. ———— *Opposing applica-* [illegible]

[illegible] Moore's I. A., 403

S. C. in Court below, KISHEN KISHORE GHOSE *v.* BURODA KANT ROY . . 8 W. R., 470

197. ———— *Appeals against* [illegible]

198. ———— *Appeal from order setting aside attachment.*—So also was an appeal from an order setting aside an attachment KALLYPERSAUD SINGH *v.* JANKEE DEO NARAIN [7 W. R., 9

199. ———— *Opposing application for review or petition of appeal*—If, after a decree upon an application for review of judgment or petition of appeal, the person in whose favour the original decree was given appears in person (whether voluntarily or upon service of notice) to oppose the application, and files a vakalutnama, or does anything for the purpose of preventing the Appellate Court or [illegible]

[3 B. L. R., Ap., 33

KAILA CHAND PAUL *v.* DHIRAJ MAHATAB CHAND [18 W. R., 190

200. ———— *Opposing application* [illegible]

201. ———— *Opposing application* [illegible] in force. BIPRO DOSS GOSSAIN *v.* CHUNDER SIKUR BHUTTACHARJEE . B. L. R., Sup. Vol., 718 [2 Ind. Jur., N. S., 218 7 W. R., 521

LUTEEFUN *v.* RAJROOP SINGH [10 B. L. R., 361 : 19 W. R., 185

202. ———— *Opposing application* [illegible]

203. ———— *Appearance as respondent in appeal.*—The appearance of the person in whose favour a judgment was given as respondent on an appeal was not an act done for the purpose of keeping the judgment in force within the meaning of s. 20, Act XIV of 1859. VIRASAMY MUDALI *v.* MANNOMMANY AMMAL . . . 4 Mad., 32

204. ———— *Decree for moveable and immoveable property—Appeal in respect of*

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

the moveable property—Application for execution as regards immoveable property.—S M, on 24th April 18 6, obtained a decree against B M for possession of certain land and also for certain moveable property B M then appealed to the High Court against the decree so far only as it related to the moveable property S M appeared as respondent. The High Court modified the decree in respect of the moveable property only on the 6th March 1869. On the 26th April 1869 the decree-holder applied to the Court which gave the original decree for execution in respect of the land only. He was refused execution as barred by limitation under s. 20, Act XIV

The execution of the decree in respect of the land was barred. SRINATH MAZUMDAR *v.* BRAJANATH MAZUMDAR 4 B. L. R., Ap., 99; 13 W. R., 309

205. ———— *Appearing as respondent in appeal.*—In this case certain proceedings of the Beerbhoom Courts in 1866 appealed to, and finally decided by, the High Court in 1868 were held to be the proceedings that would, while they were being carried on, have prevented the decree-holder (respondent) from executing his decree, and therefore proceedings that prevented the bar of limitation from applying to the execution of that decree SREENARAIN MITTER *v.* DHERAJ MAHTAB CHUND . . . . . . 17 W. R., 72

206. ———— *Proceedings to enforce decree—Opposing right of third party to attached property.*—A decree-holder having sold certain property in execution and purchased it himself, a balance remained due to him under the decree. Some time after, a third party brought a

...PUT SINGH . . . . . 19 W. R., 418

207. ———— *Defence to suit.*—A party (M), having lent money on the security of land, obtained a decree against the borrower for ... stayed for six ... maintained. ... for execution, ... view to sale. Thereupon one K claimed the estate as his property, and, the claim being disallowed, commenced a suit in a Civil Court to establish his title, paying in shortly after, under protest, the sum which had accrued

ordered to refund the money. *Held* that the defence to K's suit by the decree-holder M would not be a proceeding taken by him within the meaning of s. 20, Act XIV of 1859, to keep his decree alive. PROSUNNO CHUNDER ROY *v.* MOOKOOND PERSHAD ROY . . . . . 11 W. R., 210

208. ———— *Application for execution of decree—Step in aid of execution.*—An application by a decree-holder praying that the objections taken by the judgment-debtor to the sale of property belonging to him in execution of the

209. ———— *Application by decree-holder for rejection of petition of judgment-*

RUNG LAL . . . I. L. R., 21 Calc., ...

210. ———— *Application to take a step in aid of execution—Opposing application* ...—The appear- ...

... article ...

... 47

211. ———— "*Step in aid of execution*" ... S and other

costs awarded to S against the ...

... under which they were offered ...

SHIB LAL *v.* RADHA KISHEN [I. L. R., 7 All., 898

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER.

212. ———————— *Proceedings to keep decree in force.*—Where a decree-holder is referred to a civil suit by the Court to which he

COOMAR CHOWDHRY . . 15 W. R., 207

213. ———————— *Application for copy of decree.*—The application by a decree-holder for a copy of a decree with intent to apply for execution is not a step in aid of execution within the meaning of cl 4 of art 179 of sch. II of the Limitation Act, 1871. GOPILANDRU *v.* DOMBURU [I. L. R., 11 Mad., 336

214. ———————— *Application for return of a copy of a decree.*—An application to the Court by a decree-holder asking for the return of the copy of a decree filed with a former darkhast is not a step in aid of execution within the meaning of art. 179 (4) of the Limitation Act (XV of 1877). RAJARAM *v* BANAJI MAIRAL [I. L. R., 23 Bom., 311

215. ———————— *Application to withdraw a pending proceeding for execution with*

216. ———————— *Civil Procedure Code, s. 206—Application to bring decree into conformity with judgment.*—The granting of an

217. ———————— *Application dis-*

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

218. ———————— *Application for lists of properties attached.*—An application by a decree-holder for a list of the properties attached in execution of his decree is not a step in aid of

219. ———————— *Application to*

13 All., 124, referred to. DAYA KISHAN *v.* NANHI BEGAM . . . I. L R, 20 All., 304

220. ———————— *Suit to set aside*

CHOWDHRY *v.* BROJESSUREE CHOWDHRAIN [6 W. R., Mis., 14

KASHEE PERSHAD ROY *v* SHIB CHUNDER DEB [2 W. R., Mis, 3

221. ———————— *Execution of decree obtained before the passing of Act XIV of 1859—Suit by decree-holder to declare property liable to attachment*—Process of execution of a decree obtained before the passing of Act XIV of 1859 might be issued within the time mentioned in s. 21 of that Act without any prior proceeding having been taken; but when it was sought to execute such decree after three years from the time of the passing of the Act, process of execution should not be issued unless some proceeding within the meaning of s 20 had been taken to enforce the decree or keep it in force within three years next preceding the application for execution. A regular suit by a decree-holder for a declaration that property released from attachment, under s 246 of Act VIII of 1859, is liable to attachment in execution of his decree, was a proceeding to keep a decree in force within the meaning of s 20, Act XIV of 1859 KANGALEE CHURN GHOSAL *v* BONOMALEE MULLICK MAHABEER PARSAD *v* PRANPUTTY KOER [B. L. R., Sup Vol., 709 : 7 W. R., 515

DEBGENDUR NARAIN GHOSE *v* HUREKISHORE DUTT . . . . . . 8 W. R., 88

222. ———————— *Suit under s. 246 Act VIII of 1859—Proceeding to enforce decree.* Within three years of his first application in execution of a rent-decree, *A*, the judgment-creditor, made a second application to sell certain lands, the

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

the moveable property—Application for execution as regards immoveable property.—S M, on 24th April 18 6, obtained a decree against B M for possession of certain land and also for certain moveable property. B M then appealed to the High Court against the decree so far only as it related to the moveable property. S M appeared as respondent. The High Court modified the decree in respect of the moveable property only on the 6th March 1869. On the 26th April 1869 the decree-holder applied to the Court which gave the original decree for execution in respect of the land only. He was refused execution as barred by limitation under s. 20, Act XIV

The execution of the decree in respect of the land was barred. SRINATH MAZUMDAR *v.* BRAJANATH MAZUMDAR 4 B. L. R., Ap., 99: 13 W. R., 309

205. ———— *Appearing as respondent in appeal.*—In this case certain proceedings of the Beerbhoom Courts in 1866 appealed to, and finally decided by, the High Court in 1868 were held to be the proceedings that would, while they were being carried on, have prevented the decree-holder (respondent) from executing his decree, and therefore proceedings that prevented the bar of limitation from applying to the execution of that decree. SREENARAIN MITTER *v.* DHERAJ MAHTAB CHUND . . . . 17 W. R., 72

206. ———— *Proceedings to enforce decree—Opposing right of third party to attached property.*—A decree-holder having sold certain property in execution and purchased it himself, a balance remained due to him under the decree Some time after, a third party brought a

carrying on execution. ROMA NATH JHA *v.* LUCHMIPUT SINGH . . . 19 W. R., 418

207. ———— *Defence to suit.*—A party (M), having lent money on the security

Thereupon one K claimed the estate as his property, and, the claim being disallowed, commenced a suit in a Civil Court to establish his title, paying in shortly after, under protest, the sum which had accrued

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

proceeding taken by him within the meaning of s. 20, Act XIV of 1859, to keep his decree alive. PROSUNNO CHUNDER ROY *v.* MOOKOOND PERSHAD ROY . . . . . 11 W. R., 210

of the decree may be computed. KEWAL RAM *v.* KHADIM HUSAIN . . I. L. R., 5 All., 576

209. ———— *Application by decree-holder for rejection of petition of judgment-*

Ram v Khadim Husain, I. L. R., 5 All., ... followed. GOBIND PERSHAD *alias* GOBIND LAL *v.* RUNG LAL . . . I. L. R., 21 Calc., 23

210. ———— *Application to take a step in aid of execution—Opposing application to set aside sale in execution of decree.*—The appearance of a decree-holder by his pleader to oppose an application made by the judgment-debtor to set aside a sale in execution of the decree is not an application within the meaning of art. 179 of sch. II of the Limitation Act to take a step in aid of execution. The application contemplated by that article is an application to obtain some order of the Court in furtherance of the execution of the decree. UMESH CHUNDER DUTTA *v.* SOONDER NARAIN DEO [I. L. R., 16 Calc., 747

211. ———— *"Step in aid of execution of decree."*—B, in a suit against S and other

costs awarded to S against the ...

was not sufficient to satisfy ... of the law to offer objections under the circumstances under which they were offered in the present case. SHIB LAL *v.* RADHA KISHEN [I. L. R., 7 All., 898

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER.

212. ——————— *Proceedings to keep decree in force.*—Where a decree-holder is referred to a civil suit by the Court to which he

rries on der his be in decree JENDRO COOMAR CHOWDHRY . . 15 W. R., 207

213 ——————— *Application for*

[I. L. R., 11 Mad., 300

214. ——————— *Application for return of a copy of a decree.*—An application to the Court by a decree-holder asking for the return of the copy of a decree filed with a former darkhast is not a step in aid of execution within the meaning of art. 179 (4) of the Limitation Act (XV of 1877). RAJARAM *v* BANAJI MAIRAL

[I. L. R., 23 Bom., 311

215. ——————— *Application to withdraw a pending proceeding for execution with*

216. ——————— *Civil Procedure Code, s. 206—Application to bring decree into conformity with judgment.*—The granting of an

Act (XV of 1877) *Kishen Sahai* v. *Collector of Allahabad, I. L. R., 4 All., 137,* distinguished KALLU RAI *v.* FAHIMAN . I. L. R., 13 All., 124

217. ——————— *Application dismissed for non-payment of process-fees.*—A decree was passed in 1884 against the Valiya Rajah of Chirakal Kovilagom, since deceased. In 1886 the

218. ——————— *Application for lists of properties attached.*—An application by a decree-holder for a list of the properties attached in execution of his decree is not a step in aid of

219. ——————— *Application to amend decree under s. 206, Civil Procedure Code, 1882—Application to "the proper Court"*—An

Sahai v. *Collector of Allahabad, I. L. R, 4 All., 137; Tarsi Ram* v *Man Singh, I L. R., 8 All., 492,* and *Kallu Rai* v *Fahiman, I. L. R, 13 All., 124,* referred to. DAYA KISHAN *v.* NANHI BEGAM . . . I. L. R., 20 All., 304

220. ——————— *Suit to set aside order under s. 246, Civil Procedure Code, 1859*—

CHOWDHRY *v.* BROJESSUREE CHOWDHRAIN

[6 W. R., Mis, 14

KASHEE PERSHAD ROY *v* SHIB CHUNDER DEB

[2 W. R., Mis., 3

221. ——————— *Execution of decree obtained before the passing of Act XIV of 1859—Suit by decree-holder to declare property liable to attachment*—Process of execution of a decree obtained before the passing of Act XIV of 1859 might be issued within the time mentioned in s 21 of that Act without any prior proceeding having been taken; but when it was sought to execute such decree after three years from the time of the passing of the Act, process of execution should not

from attachment, under s 246 of Act VIII of 1859, is liable to attachment in execution of his decree, was a proceeding to keep a decree in force within the meaning of s 20, Act XIV of 1859 KANOYLEE CHURN GHOSAL *v.* BONOMALEE MULLICK MAHABEER PARSAD *v* PRANPUTTY KOER

[B. L. R., Sup Vol., 709 : 7 W. R., 515

DEEGENDUR NARAIN GHOSE *v.* HUREKISHORE DUTT . . . . . . 8 W. R., 88

222. ——————— *Suit under s 246 Act VIII of 1859—Proceeding to enforce decree.* Within three years of his first application in execution of a rent-decree, *A*, the judgment-creditor, made a second application to sell certain lands, the

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

the moveable property—Application for execution as regards immoveable property.—S M, on 24th April 18 6, obtained a decree against B M for possession of certain land and also for certain moveable property. B M then appealed to the High Court against the decree so far only as it related to the moveable property S M appeared as respondent. The High Court modified the decree in respect of the moveable property only on the 6th March 1869. On the 26th April 1869 the decree-holder applied to the Court which gave the original decree for execution in respect of the land only. He was refused execution as barred by limitation under s. 20, Act XIV

The execution of the decree in respect of the land was barred. SRINATH MAZUMDAR *v.* BRAJANATH MAZUMDAR **4 B. L. R., Ap., 99; 13 W. R., 309**

205. ———— *Appearing as respondent in appeal*—In this case certain proceedings of the Beerbhoom Courts in 1866 appealed to, and finally decided by, the High Court in 1868 were held to be the proceedings that would, while they were being carried on, have prevented the decree-holder (respondent) from executing his decree, and therefore proceedings that prevented the bar of limitation from applying to the execution of that decree. SREENARAIN MITTER *v.* DHERAJ MAHTAB CHUND . . . . . **17 W. R., 72**

206. ———— *Proceedings to enforce decree—Opposing right of third party to attached property.*—A decree-holder having sold certain property in execution and purchased it himself, a balance remained due to him under the decree. Some time after, a third party brought a

carrying on execution. ROMA NATH JHA *v.* LUCHMIPUT SINGH . . . **19 W. R., 418**

207. ———— *Defence to suit.*—A party (M), having lent money on the security of land, obtained a decree against the borrower for principal and interest, execution being stayed for six months, and plaintiff's lien on the land maintained.

a civil Court to establish his title, paying in shortly after, under protest, the sum which had accrued

... the money. *Held* that the defence to K's suit by the decree-holder M would not be a

proceeding taken by him within the meaning of s. 20, Act XIV of 1859, to keep his decree alive. PROSUNNO CHUNDER ROY *v.* MOOKOOND PERSHAD ROY . . . . . **11 W. R., 210**

208. ———— *Application for execution of decree—Step in aid of execution.*—An application by a decree-holder praying that the objections taken by the judgment-debtor to the sale of property belonging to him in execution of the

of the decree may be computed. KEWAL RAM *v.* KHADIM HUSAIN . . **I. L. R., 5 All., 576**

209. ———— *Application by decree-holder for rejection of petition of judgment-*

RUNG LAL . . . **I. L. R., 21 Calc., [illegible]**

210. ———— *Application to take a step in aid of execution—Opposing application ... of decree.*—The appear-

within the meaning of art. 179 of the Limitation Act to take a step in aid of execution. The application contemplated by that article is an application to obtain some order of the Court in furtherance of the execution of the decree. UMESH CHUNDER DUTTA *v.* SOONDER NARAIN DEO **[I. L. R., 16 Calc., 747**

211. ———— *"Step in aid of execution" ... S and other*

costs awarded to S against the alleged objec-

ces under which they were offered in the ... SHIB LAL *v.* RADHA KISHEN **[I. L. R., 7 All., 898**

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER.

212. ———— *Proceedings to keep decree in force.*—Where a decree-holder is referred to a civil suit by the Court to which he applies for execution, and he accordingly carries on proceedings in order to get full relief under his decree, such proceedings must be held to be in furtherance of execution, and as keeping the decree alive RADHA GOBIND SHAHA *v.* BROJENDRO COOMAR CHOWDHRY . . 15 W. R., 207

213 ———— *Application for*

Limitation Act, 1871. GOPILANDHU *v.* DOMBURU [I. L. R., 11 Mad., 336

214. ———— *Application for return of a copy of a decree.*—An application to the Court by a decree-holder asking for the return of the copy of a decree filed with a former darkhast is not a step in aid of execution within the meaning of art. 179 (4) of the Limitation Act (XV of 1877). RAJARAM *v.* BANAJI MAIRAL [I. L. R., 23 Bom., 311

216. ———— *Civil Procedure Code, s 206—Application to bring decree into conformity with judgment.*—The granting of an

217. ———— *Application dismissed for non-payment of process-fees.*—A decree was passed in 1884 against the Valiya Rajah of

VARMA VALIYA RAJAH *v.* SHANGARAM [I. L. R., 16 Mad., 452

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

218. ———— *Application for*

sch. II, art. 179 ... v. Seshagiri, I. L. R., 5 *Mad*, 141, distinguished. RANGA CHARIAR *v.* BALARAMASAMI CHETTI I. L. R., 21 Mad., 400

219. ———— *Application to amend decree under s. 206, Civil Procedure Code, 1882—Application to "the proper Court."*—An

Sahai v. Collector of Allahabad, I. L. R., 4 All., 137; Tarsi Ram v. Man Singh, I. L. R., 8 All., 492; and *Kallu Rai v. Fahiman, I. L. R., 13 All., 124,* referred to. DAYA KISHAN *v.* NANHI BEGAM . . . I. L. R., 20 All., 304

220. ———— *Suit to set aside order under s. 246, Civil Procedure Code, 1859*—A suit by a decree-holder to set aside orders passed under s 246, Act VIII of 1859, and to declare his right to sell a certain estate as the property of his judgment-debtor in execution of his decree, was a proceeding within the meaning of s. 20, Act XIV of 1859, to enforce such decree. RAM COOMAR CHOWDHRY *v.* BROJESSURER CHOWDHRAIN [6 W. R., Mis., 14

KASHEE PERSHAD ROY *v.* SHIB CHUNDER DEB [2 W. R., Mis., 3

221. ———— *Execution of decree obtained before the passing of Act XIV of 1859—Suit by decree-holder to declare property liable to attachment*—Process of execution of a decree obtained before the passing of Act XIV of 1859

was a proceeding to keep a decree in force within the meaning of s 20, Act XIV of 1859 KANYELLEE CHURN GHOSAL *v.* BONOMALEE MULLICK. MAHABEER PARSAD *v* PRANPUTTY KOER [B. L. R., Sup. Vol., 709: 7 W. R., 515

DEBENDUR NARAIN GHOSE *v.* HURKISHORE DUTT . . . . . . 8 W. R., 88

222. ———— *Suit under s. 246 Act VIII of 1859—Proceeding to enforce decree.* Within three years of his first application in execution of a rent-decree, *A*, the judgment-creditor, made a second application to sell certain lands, the

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

alleged property of *B*, the judgment-debtor. Third parties intervened who established their claim to the land. *A* thereupon brought a regular suit, and succeeded in obtaining a decree declaring the lands in suit to be the property of *B*. Within a year of the date of this decree, but more than three years after his first application for execution, *A* filed a third application for attachment of other lands belonging to *B*. *Held* the application was barred by limitation. RAMSOONDER SANDYAL *v.* GOPESSUR MOSTOFEE

[I. L. R., 3 Calc., 716: 2 C. L. R., 220

223. ———— *Suit to set aside order in a claim case—Execution of decree—Application in continuation of a previous application for execution.*—Cl. 4, art 179, sch. II of the Limitation Act, 1877, does not include a suit to set aside an order passed in a claim case. *R* and *L* obtained a decree against *B* on the 7th March 1881, and in execution of that decree certain property belonging to *B* was attached on the 11th June 1883 Thereupon a claim was made to the attached property by third parties, and a two-thirds share therein was released by the Court executing the decree On the 22nd March 1884 *R* and *L* instituted a suit for a declaration that the entire property was liable to be sold under their decree, and obtained a decree on the 29th March 1886. This decree was reversed by the lower Appellate Court, which upheld the order releasing a two-thirds share of the property, and on 22nd July 1887 the High Court affirmed the decree of the lower Appellate Court On the 15th August 1887 *R* and *L* applied for

Khalak, I. L. R., 4 Calc., 415; Chundra Prodhan v. Gopi Mohun Shaha, I. L. R, 14 Calc., 385; and *Paras Ram v Gardner, I. L. R., 1 All., 355,* distinguished. *Held* also that the institution of the suit on the 22nd March 1884 and the appeal to the High Court from the decree of the lower Appellate Court were not steps in aid of execution. *Akbar Gazee v. Bibee Nufeezun, 8 W. R., 99,* distinguished. RAGHUNANDUN PERSHAD *v.* BHUGOO LALL . . . . I. L. R., 17 Calc., 268

224. ———— *Proceeding to enforce decree.*—A suit for a declaration of plaintiff's right to assess certain lands as mal having been decreed, some of the defendants applied under s. 119, Act VIII of 1859, and prayed the Court to set aside the decree. The remaining defendants were made parties, and the decree was materially modified. *Held* that, as the decree-holder was taking steps for the purpose of preserving the original judgment intact, he was taking a proceeding to keep the decree alive. POORNANUND SURKHEL *v.* HURO SOONDUREE DEBIA . . . 13 W. R., 208

225. ———— *Procuring attachment and advertising for sale.*—Where a decree-holder expended money in procuring attachment of his debtor's property and advertising the same for sale, the proceeding was presumed, nothing to the contrary being shown, to be a *bonâ fide* proceeding within the meaning of s. 20, Act XIV of 1859. JUTTADHAREE SINGH *v.* WUZEER SINGH

[12 W. R., 357

226. ———— *Application to arrest judgment-debtor.*—An application to arrest, which is not carried out, is a *bonâ fide* proceeding, taken with the intention of keeping the decree alive, only when the judgment-creditor can show that certain circumstances happened that rendered it unnecessary for him to proceed further against the judgment-debtor in execution of that process. JOYKISHEN SHAHA *v.* BISHOKA MOYEE CHOWDRAIN

[17 W. R., 355

AKBAR GAZEE *v.* NUFEEZUN . . 8 W. R., [illegible]

ESHAN CHUNDER BOSE *v.* JUGGOBUNDHOO GHOSE . . . . . 8 W. R., 98

Contra, JUNARDUN DOSS MITTER *v.* RAJAH ROOKNEE BULLUB. . . 6 W. R., Mis., 48

228. ———— *Unsuccessful application to substitute names as heirs of decree-*

enforce or keep in force a decree within the meaning of s 20. LALLA BISHEN DYAL SINGH *v.* RAM SUNKUR TEWAREE . 6 W. R., Mis., 38

229. ———— *Taking out proceeds of previous sale in execution.*—The act of taking out the proceeds of a previous sale in execution of a decree was held not to be a proceeding to keep the decree in force. KISHEN MOHUN JUSH *v.* CHUNDER KANT CHUCKERBUTTY . . 6 W. R., Mis., 49

230. ———— *Taking out money deposited in Court.*—The taking out by a decree-holder of money deposited in Court by his judgment-debtor was an effectual proceeding under s. 20, Act XIV of 1859, to keep the decree in force. JOGESH PROKASH GANGOOLY *v.* KALEE COOMAR ROY

[8 W. R., 274

231. ———— *Conduct of sale and remission of proceeds to the Collector by Nazir.*—

LIMITATION ACT, 1877—*continued*

4. STEP IN AID OF EXECUTION—*continued.*

in applying for and drawing out a portion of these proceeds RAJESHUREE DEBIA *v.* RAJ COOMAREE DOSSEE . . . . 15 W. R., 182

232. ———— *Application to take money out of Court—Boná fides*—An execution-sale was stayed by consent for two months, and the execution suit was struck off the file. During such period the execution-creditor applied to the Court to restore his execution suit and to pay to him certain moneys in deposit in Court to the credit of the judg-

the application by the Court. DHUNPUT SINGH ROY *v.* MUDHOMOTTEE DEBIA [11 B. L. R., P. C., 23: 18 W. R., 76

Reversing MODHOOMUTTY DEBIA *v.* DHUNPUT SINGH . . . . 13 W. R., 164

233 ———— *"Step in aid of execution"—Application for sale-proceeds*—An application by a decree-holder to be paid the proceeds of a sale of property in execution of the decree is "a step in aid of execution" of the decree within the meaning of art 179 (4), sch. II of Act XV of 1877 (Limitation Act). PARAN SINGH *v.* JWAHIR SINGH [I. L. R., 6 All., 366

235. ———— *Obtaining money from Court.—Held* that obtaining the money from the Court after the execution proceedings were put an end to was not an execution-proceeding at all. WODOY TARA CHOWDHRAIN *v.* ABDOOL JUBBUR CHOWDHRY . . . . . . 24 W. R., 339

237. ———— *Request for payment of money realized in satisfaction of a decree.*—A request for the payment of money realized in satisfaction of a decree is sufficient to keep the decree alive, being a step in aid of execution. *Venkatarayalu v. Narasimha, I. L. R., 2 Mad., 174,* approved and followed. Whether a particular Act is or is not an application for, or step in aid of, execution depends upon the nature of the act rather than the time at which it may possibly be done. *Hem Chunder Chowdhry v. Brojo Soondury Dabee, I. L. R., 8 Calc., 89,* qualified. KOORMAYYA *v.* KRISHNAMMA NAIDU . I. L. R., 17 Mad., 165

art. 179 of sch II of the Limitation Act (XV of 1877) BAPUCHAND JETHIRAM GUJAR *v.* MUGUTRAO . . . I. L. R., 22 Bom., 340

239. ———— *Steps taken to get money out of Court after refusal of application.*—Where, by declining to pay to the decree holder the proceeds of an execution-sale which has been con-

[18 W. R., 463

240. ———— *Payment out of Court to plaintiffs of money collected by receiver, but not under decree.*—The question whether an

pendency of the suit, which was by mortgagees for possession of the mortgaged land and for mesne profits accrued prior to the date of plaint. The receiver remained in possession of the land for a

with by the decree. *Held* that such money was not

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

241. ———— *Proceedings in execution as to mesne profits—Decree for costs*—Proceedings in execution of a decree as to mesne profits were held to be an effectual proceeding within the meaning of s. 20, Act XIV of 1859, to enforce the same decree as to costs. OOPENDUR MOHUN MUSTAFEE *v.* TRIPP . . . 5 W. R., Mis., 40

242. ———— *Decree for possession and mesne profits—Separate applications for execution.*—The holder of a decree for possession and wasilat is not obliged to apply for execution of both within three years from the passing of the decree

[8 W. R., 99

JOGESH PROKASH GANGOOLY *v.* KALEE COOMAR ROY . . . . . . 8 W. R., 274

243. ———— *Application in aid of execution—Possession—Wasilat.*—Where a decree is one for possession with wasilat from the date of dispossession to the date of suit, an application for wasilat, if not made within three years from the first application in execution, is barred HEM CHUNDER CHOWDHRY *v* BROJO SOONDURY DEBEE [I. L. R., 8 Calc., 89
10 C. L. R., 272

244. ———— *Application for execution of decree—Application for execution of portion of decree*—Where a decree-holder, in the

three years having elapsed from the date of the decree RAM BAKSH SINGH *v.* MADAT ALI [7 N. W., 95

245. ———— *Application for*

appeal against a previous order for execution of a portion of the decree, and who did not dispute the

was barred by limitation. DALICHAND BHUDAR *v.* BAI SHIVKOR . . I. L. R., 15 Bom., 242

KALIDAS MANCHAND *v.* VARJIVAN RANJI [I. L. R., 15 Bom., 245

NEPAL CHANDRA SADOOKHAN *v.* AMRITA LAL SADOOKHAN . . I. L. R., 28 Calc., 888

246. ———— *Proceedings to assess mesne profits.*—Act XIV of 1859, s. 20, applied only to such decretal orders as were complete in themselves and ready to be enforced, and not to so much of a decretal order as directed proceedings to be taken in order to assess the amount of wasilat to be recovered by the judgment-creditor, which were merely a prolongation of the trial, and not proceedings to enforce the decree. FUZEELUN *v.* KERAMUT HOSSEIN [21 W. R., 212

BUNSEE SINGH *v.* NUZUF ALI BEG [22 W. R., 328

247. ———— *Decree for possession and mesne profits—Application for execution for mesne profits, which had been omitted in execution of decree—Civil Procedure Code, 1877, s 230.*—Where a party obtains a decree for possession and mesne profits, under which he obtains possession but fails to prosecute his suit for mesne profits and the execution case is struck off for default,—*Held* that it is very doubtful if, in any case, the effect of such an order would be to prevent the decree-holder again applying for execution of that portion of the decree relating to mesne profits, as long as he keeps within the provisions of the Limitation Act. It is otherwise under s. 230, Act X of 1877. SURDHAREE LALL *v* GIRINDUR CHUNDER GHOSE [1 C. L. R., 475

248. ———— *Application for ascertainment of mesne profits—Decree for possession and mesne profits—Effect of striking off application for execution—What are proceedings and orders in "execution of decree."*—An application for delivery of possession of land decreed and for ascertainment of mesne profits was made in 1892, more than three years after a previous application for the same purpose, and was "struck off" for non-service of notice. On a fresh application for ascertainment of mesne profits in 1895,—*Held* that that portion of the proceeding or order of 1892 which related to mesne profits was not one "in execution of decree," that under the circumstances the present application was not barred by that proceeding or order; and that the application was not barred by limitation, although the claim to possession was barred. *Puran Chand* v. *Roy Radha Kishen, I. L. R., 19 Calc., 132,* followed. *Bunsee Singh* v. *Nuzuf Ali Beg, 22 W. R., 328,* distinguished. PRYAG SINGH *v.* RAJU SINGH . I. L. R., 25 Calc., 203

249. ———— *Default in payment of instalments due under decree—Application to make decree absolute under s. 89 of Transfer of Property Act (IV of 1882).*—On the 21st October 1894 the plaintiff and the defendant entered into an amicable agreement before a conciliator for payment of a mortgage-debt due to the former by annual instalments. The agreement was forwarded to the Court on the 21st December 1894, to be filed under s. 44 of the Dekkan Agriculturists' Relief Act (XVII of

LIMITATION ACT, 1877—*continued.*

4 STEP IN AID OF EXECUTION—*continued*

1879) Default having been made in the payment of the instalments, the first of which became due on the 25th January 1895, and which also was not paid, the plaintiff applied for execution by sale of the mortgaged property The application was made on the 6th September 1897, and it was struck off the file for some formal defect on the 18th November 1897. Subsequently on the 10th October 1898, the plaintiff having applied for an order absolute for sale under s 89 of the Transfer of Property Act (IV of 1882),—*Held* that art 179, sch. II of the Limitation Act (XV of 1877), applies to applications under s. 89 of the Transfer of Property Act *Held* further that in the present case the application of September 1897 should be treated as a step in aid of execution BHAGAWAN RAMJI MARWADI v GANU I. L. R., 23 Bom., 644

250. ——— *Proceedings to execute decree for costs.*—Having obtained possession of property in satisfaction of a decree, the decree-holder had to meet proceedings initiated by a third party under Act VIII of 1859, s. 230, and delayed to

251. ——— *Transmission by*

MADUR

253 ——— *Application for exe-*

effectually executed in manner provided by s. 285, Act VIII of 1859, was not an application which would save limitation. FRANKS v. NUNEH MAL

[7 N. W., 79

254. ——— *Application for transfer of decree* —*Held* that an application to the

255. ——— *Application for transfer of decree under s. 223 of Civil Procedure Code, 1877.*—An application for the transfer of a decree under the provisions of s. 223 and the following section of Act X of 1877 is a step in aid of the execution of the decree within the meaning of cl 4, art. 179, sch II of Act XV of 1877. LATCHMAN PUNDEH v MADDAN MOHUN SHYE

[I. L. R., 6 Calc., 513 : 7 C. L. R., 521

256. ——— *Application for transfer of decree—Civil Procedure Code (1882), s. 223* —An application to the Court which passed a decree for its transfer to another Court for execution under s. 223 of the Civil Procedure Code is a step in aid of execution, and sufficient to keep the decree alive within the meaning of the Limitation Act, sch II, art. 179, cl. 4 *Nilmony Singh Deo* v. *Biressur Banerjee, I L. R., 16 Calc , 744*, explained *Collins* v. *Maula Baksh, I L. R., 2 All., 284*, and *Latchman Pundeh* v. *Maddan Mohun Shye, I. L. R., 6 Calc , 513*, referred to and followed. CHUNDRA NATH GOSSAMI v. GURROO PROSUNNO GHOSE

[I. L. R., 22 Calc., 375

257. ——— *Application for transfer of decree* —An application to the Court which passed a decree for its transfer to another

258. ——— *Application to transfer decree for execution—Civil Procedure Code, 1877, s 223* —Where a decree has been trans-

259. ——— *Transmission of decree for execution—Application for execution of attached decree—Civil Procedure Code, ss 223, 228, 273.*—A decree was passed on the 20th February 1878 by the Munsif of M. In November 1878 it was, in accordance with the provisions of s 223 of the Civil Procedure Code, transferred to the Munsif of J. On the 21st January 1879 an application for execution of the decree was made to

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

and such a proceeding as could keep alive the decree of the 20th February 1878; and that a subsequent

Act, inasmuch as its object is to obtain money in order to pay off the judgment-debtor. LACHMAN *v.* THONDI RAM . . I. L. R., 7 All., 382

260. ——— *Application for transmission of decree.*—Where a decree-holder applied to the Court to transmit the decree to another Court for execution, and on a subsequent date paid

be sufficient to give a new period of limitation. VELLAYA *v* JAGANATHA . I. L. R., 7 Mad., 307

November 1887 the mortgaged property was sold by the Hajipore Court. On appeal, on the 2nd September 1890, the High Court set aside the sale on the ground of want of jurisdiction. Thereupon, on the 6th September 1890, *S* applied to the Hajipore Court to transfer the decree for execution to the Munsif's Court at Muzaffarpore. On the 19th December 1890 *S* applied for execution to the Muzaffarpore Court. *L*, who had meanwhile purchased the mortgaged property from *P*, objected that the application was barred. *Held* that the application was not barred, as the application of the 6th September 1890 was a step in aid of execution. *Nilmony Singh Deo v. Biressur Banerjee, I. L. R., 16 Calc., 744,* distinguished. *Latchman Pundeh v Maddan Mohun Shye, I. L. R., 6 Calc., 513,* referred to RAJBULLUBH SAHAI *v* JOY KISHEN PERSHAD *alias* JOY LAL [I. L. R., 20 Calc., 29

262. ——— *Proceedings to get Privy Council decree sent down for execution—Act XXV of 1852, s. 2.*—Proceedings had in the High Court for the purpose of getting a Privy Council order sent down to the lower Court for execution, whether strictly legitimate or not with reference to Act XXV of 1852, s. 2, if *bonâ fide* efforts made by the judgment-creditor to carry into effect that order, must be taken to be proceedings keeping the decree alive. LETHBRIDGE *v.* PROHLAD SEN [19 W. R., 301

263. ——— *Attempt to settle accounts.*—An attempt at settlement of accounts in Court is sufficient to keep a decree alive. FUZULUTOONISSA *v.* CHUTTER DHAREE SINGH [6 W. R., Mis., 43

264. ——— *Application for execution after decision of case on soleinamah.*—Where parties to a suit which had been decreed entered

SIRCAR . . . . . 15 W. R., 514

265. ——— *Proceedings in execution to enforce barred decree—Compromise of decree, Payments under.*—Where a decree-holder en-

... were taken by the de-

v BILLINGS . . . I. L. R., 1 All., [illegible]

266. ——— *Application for execution of decree—Partial satisfaction under arrangement made through Court.*—*A*, a judgment-debtor, being arrested in execution of a decree, applied in the year 1873, under s 273 of Act VIII of 1859, for his discharge. The Court refused to ... on condition that *A* ... oney ... *A*, ... rged, ... *A*, ... made regular payments into Court until October 1876, when he discontinued payment. *Held*, on an application made in June 1877 by the judgment-creditor for a warrant of further arrest against *A*, that inasmuch as the decree-holder was not seeking to enforce ... ment made by the

limitation was held not to apply. RADHA [illegible] BOSE *v.* AFTAB CHANDRA MAHATAB [I. L. R., 7 Calc., 61

268. ——— *Kistbandi—Extension of time for limitation by agreement of parties.*—*A* obtained a decree against *B* on the 17th September 1853. The decree was kept in force by sundry proceedings, the last of which was taken on the 30th December 1864. On the 6th February 1865, the parties filed a kistbandi, whereby they agreed that the amount due under the decree should be

LIMITATION ACT, 1877—*continued.*

4 STEP IN AID OF EXECUTION—*continued.*

payable by instalments, the first instalment to fall due on 11th July 1865; at the same time an existing attachment was given up On 14th July 1868, *A* applied for execution of the decree in respect of six instalments due under the kistbandi *Held* (MITTER, J., dissenting) the Court could not recognize any arrangement between the parties enlarging the period of limitation allowed by law for the execution of decrees, or which alters the terms of the decree.

S. C KRISTO KOMAL SINGH *v* HUREE SIRDAR [13 W. R., F. B., 44

269. ——— *Receipt of instalment under compromise out of Court* —The receipt of instalments by a decree-holder out of Court in

270. ——— *Application reporting adjustment by parties* —An application by a

meaning of art 167, sch II of Act IX of 1871, and a "step in aid of execution of the decree" within the meaning of art. 179, sch II of Act XV of 1877 GHANSHAM *v.* MUKHA [I. L. R, 3 All., 320

271 ——— *Execution of decree —Certificate by decree-holder of payment out of Court—Civil Procedure Code, ss. 257, 258* —*Held*, following *Tarini Das Bandyopadhya* v. *Bishtoo Lal Mukhopadaya, I L. R, 12 Calc, 608* (TYRRELL, *J*, doubting), that an application made by decree-holder, the object of which is that the receipt of certain sums of money paid out of Court may be

272. ——— *Application to re-*

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

Limitation Act TARINI DAS BANDYOPADHYA *v* BISHTOO LAL MUKHOPADAYA [I. L. R., 12 Calc, 608

273. ——— *Application by decree-holder under Civil Procedure Code, s. 258 to enter up payment made under decree* —The expression "step in aid of execution" in Act XV of 1877, sch II

any applicat

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It includes

under s 258 of the Civil Procedure Code to enter up pa

274. ——— *Application to record certificate of payment by judgment-debtor in part satisfaction—Civil Procedure Code, s. 258.*— An application made by some of the judgment-debtors (and signed by the decree-holder) to have certain payments, which were made out of Court, certified under s 258 of the Civil Procedure Code, and that time be allowed to pay the balance of the decree, the attachment put upon their property continuing, is "a step in aid of execution" such as will keep the decree alive within the meaning of the Limitation Act, art. 179, cl 4 WASI IMAM *v.* POONIT SINGH . . I. L. R., 20 Calc., 696

275. ——— *Application for*

the decree was returned to the subordinate Court on the 5th July 1888. On the 20th February 1889,

SETT . . . . . I. L. R., 19 Mad., 67

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

276. ——— *Application for time —Application to review the order striking off the execution case and to restore it to file.*—A decree which directs the realization of the decretal amount by sale, in the first instance, of the mortgaged properties, and afterwards from the persons and other properties ... not "a ... mean- ... applica- ... tion",

but an application for review of an order striking off an executi n case and for its restoration to the file is undoubtedly a step in aid of execution within the meaning of the Limitation Act (XV of 1877), sch. II, art. 179. KARTICK NATH PANDEY *v.* JUGGERNATH RAM MARWARI . I. L. R., 27 Calc., 285

277. ——— *Agreement to suspend execution.*—An agreement to suspend execution for a specified time was not a "proceeding" within the meaning of s. 20, Act XIV of 1859. MEHEROONISSA *v.* ROUSHAN JEHAN . 17 W. R., 393

278. ——— *Application to stay* ...

FAKIR MUHAMMAD *v.* GHULAM HUSAIN [I. L. R., 1 All., 580

279. ——— *Application by decree holder to release portion of property from attachment and have case struck off the file.*—In execution of a decree, certain property was attached, and the sale-proclamation issued and served. Prior to the sale, the decree-holder applied to the Court executing the decree to release a portion of the pro- ...

so far as the remainder of the property was concerned, being maintained The application was acceded to and the case struck off the file. On a subse- ...

the execution in any respect whatsoever. ABDUL HOSSEIN *v.* FAZILUN . I. L. R., 20 Calc., 255

... *v.* RAMASAMI . . . I. L. R., 2 Mad., 218

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

281. ...

of the decree," within the meaning of art. 179, sch. II, Act XV of 1877, and limitation cannot be computed from the date of such an application. MAINATH KUARI *v.* DEBI BAKHSH RAI [I. L. R., 3 All., 757

282. ——— *Application to postpone sale.*—Certain lands having been attached in ...

take a step in aid of execution within the mean... of art. 179 of sch. II of the Limitation Act, 1877. DHARANAMMA *v.* SUBBA . I. L. R., 7 Mad., 306

See VELLAYA *v.* JAGANATHA [I. L. R., 7 Mad., 307

283. ——— *Application to postpone sale on consent of parties*—Application for execution of a decree was made on the 22nd November 1875, and in pursuance of such application certain property belonging to the judgment-debtor ... for sale on the 27th March 1876. On ... ree made a ... wherein it was stated that the judgment-debtor ... ad made a certain payment on account of such decree, and the decree-holders had agreed to give him four months' time to pay the balance thereof, and it was prayed that such sale might be postponed and such time might be granted. The Court on the same day made an order on such application postponing such sale. The next application for execution of such decree was made on the 17th January 1879 The lower Appellate Court held, with reference to the question whether such application had been made within the time limited by law, that it had been so made, as under art. 179 (6), sch. II of Act XV of 1877, such time began to run from the date of the expiration of the period of grace allowed to the judgment-debtor under the application of the 27th March 1876. *Held* that art. 179 (6) had not any relevancy to the ... proceedings of the ... erly ... the ... 17th ... PRASAD . . . . I. L. R., 2 All., 60

284. ——— *Oral application for proclamation of sale.*—An oral application, on a sale of immoveable property in the execution of a decree having been adjourned for the fixing of a

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

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time.

See AMRICA PERSAD SINGH *v.* SURDHARI LAL [I. L. R., 10 Calc., 851

285. ——— *Application for proclamation of sale—Step in aid of execution*—

LAL

286. ——— *Verbal application for the sale of attached property*.—An application to the Court to order the sale of property

MANEKLAL JAGJIVAN *v.* NASIA RADDHA [I. L. R., 15 Bom., 405

287. ——— *Application to execute decree—Application for sale of property under attachment*.—The application contemplated by art 179 of sch II of the Limitation Act, and described as "an application for the execution of a decree or order of any Civil Court, etc, etc," is an application within the terms of s 235 of the Civil Procedure Code, that is to say, an application setting the Court in motion to execute a decree in any manner set out in the last column of the form prescribed; but having so set the Court in motion, any further application, during the continuance of the same proceeding, is an application to take some step in aid of execution within the terms of cl 4 in the last column of art 179 of the Limitation Act An application, therefore, for the sale of property under attachment is an application merely in aid of an execution then proceeding. CHOWDHRY PAROOSH RAM DAS *v.* KALI PUDDO BANERJEE . I. L. R., 17 Calc., 53

288. ——— *Application to sell attached property subject to a mortgage*.—A judgment-creditor applied, on the 22nd May 1882, for execution of a decree, dated 7th November 1881, and certain property of the judgment-debtor's was attached. Thereupon a claim was preferred by a

and on the 29th November 1886 a third application was made. To the latter application objection was taken, and it was contended that the decree was barred by reason of more than three years having elapsed between the application of the 22nd May 1882 and that of the 20th June 1885 *Held* that the application of the 10th August 1882 by the judgment-creditor to allow the sale of attached property subject to the mortgage of the claimant was "a step in aid of execution of the decree" within the meaning of art 179, sch. II, Act XV of 1877, and that execution of the decree was therefore not barred LALBADDI MULLICK *v* KALA CHAND BERA [I. L. R., 15 Calc., 363

289. ——— *Application by transferee of decree for sale of hypothecated property—Non-registration of deed of assignment—Civil Procedure Code, s. 232.*—On the 13th November 1886 the assignee of a decree for sale of hypothecated property applied, under s. 232 of the Civil Procedure Code, for execution of the decree, but, objection being raised that the deed of assignment had not been registered, subsequently applied for the return of the deed that it might be registered, and it was returned accordingly. The deed was afterwards duly registered The next application for execution of the decree was made on the 25th April 1888. *Held* (i) that the deed of assignment was not a document which comprised immoveable property within the meaning of s. 49 of the Regis-

MUHAMMAD FAIZULLAH . I. L. R, 13 All., 89

290.

art 179, sch. II of the Limitation Act (XV of 1877). BANSI *v.* SIKREE MAL [I. L. R., 13 All., 211

291. ——— *Application by decree-holder for leave to bid.*—An application by the decree-holder for leave to bid at the sale in execution of the decree is not a step in aid of execution within

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

the meaning of the Limitation Act, sch. II, art. 179. *Toree Mahomed* v. *Mahomed Mabood, I. L. R., 9 Calc., 730,* and *Ananda Mohan Roy* v. *Hara Sundari, I. L R., 23 Calc, 196,* referred to. *Bansi* v. *Sikree Mal, I. L. R., 13 All, 211,* dissented from. RAGHUNUNDUN MISSER v KALLYDUT MISSER [I. L. R., 23 Calc., 690

292 ———— *Application by decree-holder for leave to bid at the auction-sale.*— [illegible] leave to bid at [illegible] immoveable pro[illegible] to take a step in aid of execution of the decree, and falls within the words of art. 179, cl. 4, of the Limitation Act (XV of 1877). VINAYAKRAO GOPAL DESHMUKH v. VINAYAK KRISHNA DHEBRI [I. L. R., 21 Bom., 331

293. ———— *Application by the decree-holder for leave to bid at a sale in execution of his decree—Civil Procedure Code,* [illegible]

Limitation Act, 1877. *Bansi* v *Sikree Mal, I. L. R., 13 All, 211,* followed. *Raghunandan Misser* v. *Kallydut Misser, I. L. R, 23 Calc., 690,* dissented from. DALEL SINGH v UMRAO SINGH [I. L. R., 22 All., 399

294. ———— *Application to receive poundage fee—Application for the return of a decree partially executed by the Court where transferred for execution—Civil Procedure Code* [illegible]

it has been transferred for execution, and by which it has been partially executed, is a step in aid of execution within the meaning of the Limitation Act, [illegible]

295. ———— *Application to re-* [illegible]

paying it into Court, is a step in aid of execution within the meaning of the Limitation Act, sch. II, art. 179, cl. 4. *Aghore Kali Debi* v. *Prosunno Coomar Banerjee, I. L. R., 22 Calc., 827,* followed. *Radha Prosad Singh* v. *Sandar Lal, I. L. R., 9 Calc., 644,* distinguished. ANANDA MOHAN ROY v. HARA SUNDARI . . I. L. R., 23 Calc., 196

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

296. ———— *Deposit of process-fee.*—A deposit of a process-fee is a step in aid of execution within cl. 4 of s 179 of sch. II of the Limitation Act. *Ambica Pershad Singh* v. *Surdhari Lal, I. L. R, 10 Calc, 851,* referred to. NARENDRA NATH PAHARI v BHUPENDRA NARAIN ROY . . . I. L. R., 23 Calc., 374

297. ———— *Payment of bhatta —Payment of process-fee.—Quære*—Whether the payment of bhatta is sufficient proof of an application to the Court to take the step in respect of which the bhatta is paid. Mere payment of a process-fee under circumstances from which no application can be inferred does not satisfy the requirements of the article. TRIMBAK BAPUJI PATVARDHAN v. KASHINATH VIDYADHAR GOSAVI I. L. R., 24 Bom., 722

298. ———— *Payment of process-fee.*—The mere payment of process fee for the issue of notice for the purpose of an inquiry under s. 287 of the Code of Civil Procedure, or the payment of costs for the issue of a proclamation of sale, un[illegible] operate to [illegible] within the [illegible] schedule to [illegible] *Sahai* v. [illegible], 88, and [illegible] *mohandra, I. L. R., 20 Bom., 179,* followed. [illegible] *Nand* v. *Sarbishwara Nand, Weekly Notes, All. (1893), 217,* distinguished. *Radha Prosad Singh* v. *Sundar Lall, I. L. R., 9 Calc., 644,* dissented from. THAKUR RAM v. KATWARU RAM [I. L. R, 22 All., 358

299. ———— *Payment of deficient Court-fee.*—An application for execution of a decree was presented on the 17th July 1890. A notice under s 248 of the Code of Civil Procedure (Act XIV of 1882) was issued on the 1[illegible]th July 1890. The process-fee for service of the notice being deficient, the decree-holder paid the deficiency on the 29th August 1890 On the 22nd August 1893, the decree-holder presented a fresh application for execution. *Held* that the second application for execution was time-barred. The payment of the additional Court-fee was not "a step in aid of execution of a decree" within the meaning of cl 4, art. 179 of sch. II of the Limitation Act (XV of 1877) DWARKANATH APPAJI v. ANANDRAO RAMCHANDRA . . . I. L. R., 20 Bom., 179

300. ———— *Applications to be substituted on the record as a party and for notice of execution to issue to representative of judgment-debtor—Civil Procedure Code (1882), s. 230—Application for execution of decree—Continuous proceedings.—A* obtained a decree against *B* upon an award, which directed that the sum of R1,840 awarded to *A* should be recovered with interest by attachment of the mortgaged property and not by a sale, except in case of its being held that the property was not liable to attachment. On the 12th October 1874 *A* applied for execution of the decree, and thereupon the mortgaged property was attached

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

and placed under the management of the Collector, who paid the proceeds from time to time into Court till 1891. The Court paid the proceeds to *A* on the 25th February 1876, the 5th February 1877, and the 7th October 1877 In 1878, *A* being dead, his son *C* ... d ... s o ... e

executed against him *D* did not appear, and an *ex-parte* order was passed for execution to proceed as against him The Collector continued in management till the 5th February 1892, when the application (darkhast) of 1874 was withdrawn, and a fresh application was made by *C* on the 12th June 1892 *D* resisted on the ground that the application was time-barred under art 179 of the Limitation Act (XV of 1877). *Held* that the application of 1892 was not barred by limitation, as the execution proceedings under the first darkhast of 1874 were con-...

art 179, cl. 4, of the Limitation Act. KESHAVLAL BECHAR *v.* PITAMBERDAS TRIBHUVANDAS [I. L. R., 19 Bom., 261

301. ———— *Application for* ...

302. ———— *Application by decree-holder to be put in possession of property which he has purchased at a sale in execution of his decree.*—An application made by a decree-holder to be put into possession of property which he has purchased at an auction-sale held in execution of his decree is a "step in aid of execution" of that decree, and would afford the decree-holder a fresh starting-point for limitation. *Sajan Singh v. Hira Singh, I. L. R., 12 All., 399,* referred to. MOTI LAL *v.* MAKUND SINGH . I. L. R., 19 All., 477

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

SARIATOOLLA MOLLA *v.* RAJ KUMAR ROY [I. L. R., 27 Calc., 709 4 C. W. N., 681

(e) CONFIRMATION OF SALE.

303. ———— *Date from which limitation runs.*—Until the order is passed confirming a sale in execution, the decree-holder must be ...

304. ———— *Proceeding to keep* ...

BURDWAN *v.* LUCKHEE MONEE DEBEE [8 W. R., 359

JUGGUT MOHINEE BIBEE *v.* RAM CHUND GHOSE [9 W. R., 100

SHIB RAM DEY *v.* BANEE MADHAB MITTER [11 W. R., 117

305. ———— *Proceeding to keep decree in force.*—*Held* a confirmation of a sale in ...

...YET HOSSEIN ALI [12 B. L. R., 500: 20 W. R., 31

GOBIND CHUNDER CHOWDHRY *v.* JOHURUNNISSA BIBEE . . . . . 18 W. R., 156

306. ———— *Proceeding to keep decree in force —Quære*—Whether a mere confirmation of a sale is a proceeding sufficient to keep the ...

BAHADUR [12 B. L. R., 506 note: 10 W. R., 224

307. ———— *Proceeding to keep decree in force.*—Where the decree-holder takes no step whatever to cause an execution sale to be confirmed, the confirmation of the sale by the Court cannot be regarded as a proceeding on his part towards enforcing the decree. MULLICK ENAET ALI *v.* WAHED ALI . . . . 13 W. R., 315

308. ———— *Proceeding to keep decree in force —*Confirmation of a sale in execution of a decree by the Court of its own motion, and drawing out the proceeds of sale by the execution-creditor, were not proceedings to enforce such ...

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

310. ———— *Proceeding to enforce decree—Application for copy of decree.*—On the 19th of March 1880 a decree for money was passed, and on the 19th of February 1881 certain propert
in exec
Court
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the Court for a copy of the decree, in order that

ground that the passing of the order of the 22nd of April 1881 was sufficient, under the provisions of art. 179, cl. 4, of the Limitation Act of 1877, to keep the decree alive. The lower Appellate Court also held that execution was not barred by limitation, but solely on the ground that the application of the 10th of January 1882 was sufficient to keep the decree alive. It did not appear that the order of the 19th of February 1881 was passed in consequence of any application by the decree-holder, and neither the application of the 10th of January 1882 nor any copy thereof was put in evidence on the present application. *Held*, on appeal to the High Court, that the execution of the decree was barred by limitation. RAJKUMAR BANERJI *v.* RAJLAKHI DABI

[I. L. R., 12 Calc., 441

(*f*) MISCELLANEOUS ACTS OF DECREE-HOLDER.

311.
under
precep
tion

S C. NAUNHEE KOONWAR *v.* KUSTOOREE KOONWAR . . . . . . 13 W. R., 141

312. ———— *Confiscation of decree—Correspondence relating to right of Government.*—Where a decree had awarded a sum as

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*concluded.*

313. ———— *Application for certificate of administration.*—The petitioners, as widow and adopted son of a decree-holder, applied by petition to the District Munsif for execution of the

to the Civil Court, and an order was made refusing

1859. *Quære*—Whether a suit on the decree could be maintained. LAKSHAMMA *v.* VENKATARAGAVA CHARIAR . . . . . . 4 Mad., 89

cation within the meaning of cl. 4, art. 179, sch. II of the Limitation Act, 1877. ALI MUHAMMAD KHAN *v.* GUR PRASAD . . . I. L. R., 5 All., 344

315. ———— *Application for*

within the meaning of cl. 4, art. 179 of Limitation Act, 1877. *Per* INNES, J.—The right to
230 of the

316. ———— *Notice not to pay amount decreed—Deduction of time decree is under*
judgment-debtor,
judgment-
keep the

RADAS GOVARDHANDAS GULABDAS . I. L.

5. NOTICE OF EXECUTION.

317. ———— cl. 5—*Issue of notice under s. 216, Civil Procedure Code, 1859.*—The word "proceeding" in s. 20 of Act XIV of 1859, included any *bonâ fide* application, or the last act done by the party, by the Court, or by the officer of the Court, in furtherance of such application; hence it included the issue by the Court of a notice under

LIMITATION ACT, 1877—*continued.*

5. NOTICE OF EXECUTION—*continued.*

s. 216 of the Civil Procedure Code, and the service of it by the officer of the Court. RAM SAHAI SINGH v. SHEO SAHAI SINGH. GURUDAS AKHULI v. GOBIN NAIK . B. L. R., Sup. Vol., 492: [1 Ind. Jur., N. S., 421: 6 W. R., Mis., 98

TABBUR SINGH v. MOTEE SINGH . 9 W. R., 443

RAJEEB LOCHUN SAHA CHOWDHRY v. MASSEYK [18 W. R., 193

MAHOMED BAKER KHAN v. SHAM DEY KOER [12 W. R., 2

SUBHAN ALI v. SUFDAR ALI . 24 W. R., 227

Contra, TABBUR SINGH v. MOTEE SINGH [8 W. R., 306

SHAM CHAND BYSACK v. LUCAS [5 W. R., Mis., 5

GIRJANUND OOPADHYA v. CHUNDER BINODE OOPADHYA . . . . 5 W. R., Mis., 5

KISTO KANT BURAL v. NISTARINEE DEBIA [8 W. R., 268

MAZEDOONISSA BAEEBEE v. FUZZEN BEEBEE [4 W. R., Mis., 6

318. ——— *Civil Procedure Code, s 216, Notice under—Bonâ fides* —The service of a notice under s 216 of Act VIII of 1859, if made *bonâ fide* with a view to take further proceedings, was sufficient to keep a decree alive. DHIRAJ MAHTAB CHAND BAHADUR v. LAKHI BIBI [6 B. L. R., Ap., 146

BHUGOBUTTY v. MOTEE CHAND PUTEEDUNDO [6 W. R., Mis., 97

OBHOY CHURN DUTT v. MODHOO SOODUN CHOWDHRY . . . . . . 9 W. R., 330

CHILICANY BASKARAYENINGARU v. PILEARY SETTY RAJAVULU NAIDU . . 5 Mad., 100

MAKOONDONATH BHADCORY v. SHIB CHUNDER BHADCORY . . . . 19 W. R., 102

319. ——— [illegible]

[illegible] period of limitation under Act IX of 1871, sch. II, art. 167, any question as to its *bonâ fides* notwithstanding. KOONJ BEHAREE LALL v. GIRDHAREE LALL . . . . . 23 W. R., 484

SHEO SAHOY SINGH v. BIRJ BEHARY SINGH [23 W. R., 195

320. ——— *Issue of notice under s. 216, Civil Procedure Code, 1859.*—A [illegible]

the same matter. ESHAN CHUNDER BOSE v. PRANNATH NAG [14 B. L. R., F. B., 143: 22 W. R., 512

ROHINI NUNDUN MITTER v. BHOGOBAN CHUNDER ROY . 14 B. L. R., 144 note: 22 W. R., 154

SHURUT CHUNDER SEN v. ABDOOL KHYE MAHOMED MOHUTESSUR BILLAH . . 23 W. R., 327

321. ——— *Issue of notice of execution—Execution partly had under Act XIV of 1859.*—In an execution case, in which the notice was served before, but the application for execution was made after, the passing of the present law of limitation,—*Held* that the period within which proceeding should be taken must be reckoned from the date of the notice, and not from the date of application. BEMUL DOSS v. IKBAL NARAIN [25 W. R., 240

RUGHOONATH DASS v. SHIROMONEE PAT MOHADEBEE . . . . . . 24 W. R., 20

322. ——— *Issue of notice of execution.*—When proceedings have been taken subsequent to an application to execute a decree and to [illegible]

[illegible] W. R., 548

323. ——— *Notice to judgment-debtor of execution of decree*—[illegible]

[illegible] judgment-debtor or attachment of his property, but prayed that the Court would, under s. 216 of that Act, issue a notice to the judgment-debtor to show cause why the decree should not be executed against [illegible]

[illegible] impugned. *Per* SPANKIE, J., *contra*. BEHARI LAL v. SALIK RAM [I. L. R., 1 All., 676

324. ——— *Service of notice of execution.*—Application for execution of a decree was made on the 10th November 1869, and on the 27th November 1869 notice issued under s. 216 of the Civil Procedure Code, 1859. Again, on the 4th February 1873, application was made for execution, and notice was issued on the 19th February 1873

LIMITATION ACT, 1877—*continued.*

5. NOTICE OF EXECUTION—*continued.*

under s. 216. A subsequent application for execution was made on the 31st August 1874, and the order for notice to issue under s 216 was made on the same day. The question raised in appeal against the order to issue execution was whether the plain-

application for execution on the 4th February 1873, being more than three years after the date of issuing the last prior notice under s. 216—*viz.*, 27th November 1869—was late under art. 167, paragraph 5, Act IX of 1871, execution was barred by limitation at and before the date of that application, and that this bar was not removed by the circumstance that the judgment-debtor had allowed the service of the notice on him in February 1873 to pass unchallenged. *Chilicany* v. *Rajaiulu Naidu, 5 Mad., 100,* distinguished. PROBHACARA ROW *v.* POTANNAH [I. L. R., 2 Mad., 1

325. ——————— *Service of notice of execution—Civil Procedure Code, 1859, s 216.*— On the presentation of the last of a series of appli-

UNNODA PERSAD ROY *v* KOORPAN ALLY [I. L. R., 3 Calc., 518: 1 C. L. R., 408

326. ——————— *Civil Procedure Code, 1882, s. 248—Notice of valid or invalid application.*—The issuing of a notice under s 248 of the Code of Civil Procedure gives a fresh starting point for limitation under art. 179, cl. 5, of sch. II of the Limitation Act, 1877, whether such notice is issued on a valid or an invalid application for execution. DHONKAL SINGH *v.* PHAKKAR SINGH [I. L. R., 15 All., 84

327. ——————— Where an application for notice to issue under s 248 of the Civil Procedure Code may be found defective, but the defects were held to be not material,—*Held* that, even if

84, referred to. GOPAL CHUNDER MANNA *v.* GOSAIN DAS KALAY . . I. L. R., 25 Calc., 594 [2 C. W. N., 556

328. ——————— *"Date of issuing notice," Meaning of the words—Execution of decree.* —Art 179, cl. 5, of the Limitation Act (XV of 1877) applies only where the notice under s. 248 of the Code of Civil Procedure (Act XIV of 1882) has been

LIMITATION ACT, 1877—*continued.*

5. NOTICE OF EXECUTION—*concluded.*

actually issued. If no notice is issued, time cannot be counted from the date of the order of the Court; though it may be that where a notice has been issued, the date of its issue would be the date on which the Court ordered its issue. HARI GANESH *v.* YAMUNABAI . . . I. L. R., 23 Bom., 35

6. ORDER FOR PAYMENT AT SPECIFIED DATE.

329. ——————— cl. 6—*Civil Procedure Code, s. 230 (b)—Execution of decree—Annual payments—"Certain date."*—A decree which directs payment to be made annually to the decree-holder is not a decree which directs payment of money to be made at a certain date within the meaning of s. 230 of the Code of Civil Procedure or cl. 6 of art. 179 of sch. II of the Limitation Act, 1877. Where a decree directed annual payments to be made, and the decree-holder applied for and obtained payment of the money due for 1877 and 1878 in March 1879 by execution, and then applied in July 1882 for the sums due for 1880 and 1881,—*Held* that this application was barred by limitation. YUSUF KHAN *v.* SIRDAR KHAN . . . I. L. R., 7 Mad., 83

330. ——————— *Decree for periodical payments.*—If it can be gathered from a decree that payments are directed to be made on dates or at periods which are sufficiently indicated by the

without specifying date of payment—Default in paying such annuity—Enforcement of payment by execution of decree — Computation of time — A Hindu widow obtained a decree, dated 7th September

precise date was specified in the ... liable to of the annuity, the judgment-debtors were liable to make the payment on the day year from its date, and thencef... date year after year. to be regar... for that ye... for each ye... a particular day, limitation should ... from that day should the judgment-debtor fail to obey the order of the Court. *Sakharam Dikshit* v. *Ganesh Satha, I. L. R., 3 Bom., 193,* followed. *Sabhanatha Dikshatar* v. *Subba Lakshmi Ammal,*

LIMITATION ACT, 1877—*continued.*

6. ORDER FOR PAYMENT AT SPECIFIED DATE—*continued.*

I. L. R., 7 *Mad.*, 60, and *Yusaf Khan* v. *Sirdar Khan*, *I. L. R.*, 7 *Mad.*, 83, distinguished. LAKSHMIBAI BAPUJI OKA v. MADHAVRAY BAPUJI OKA [I. L. R., 12 Bom., 65

332. ———— *Application for execution of maintenance decree.*—On an application

[I. L. R., 10 Mad., 152

333. ———— *Decree for redemption*

[I. L. R., 11 All., 500

334. ———— *Decree for redemption—No time fixed in the decree for payment.*—

[I. L. R., 20 Bom., 362

See GAN SAVANT BAL SAVANT v. NARAYAN DHOND SAVANT . . . I. L. R., 23 Bom., 467

MALOJI v. SAGAJI . I. L. R., 13 Bom., 567

and NARAYAN GOBIND v. ANANDRAM KOTIRAM [I. L. R., 16 Bom., 480

335. ———— *Civil Procedure Code, 1882, s. 210*

DALA RAMACHANDRA REDDI [I. L. R., 7 Mad., 152

336. ———— *Civil Procedure Code, Act XIV of 1882, s. 210—Petition of judgment-debtor amounting to fresh decree.*—On the 23rd February 1878 an application was made for

under the provisions of the second paragraph of s. 210 of the Code of Civil Procedure, of which the decree-holder was entitled to have execution. JHOTI SAHU v. BHUGUN GIR . I. L. R., 11 Calc., 143

337. ———— *Application for execution of decree—Order on petition to pay by instalments—Civil Procedure Code, s. 210*—An ap-

LIMITATION ACT, 1877—*continued.*

6. ORDER FOR PAYMENT AT SPECIFIED DATE—*continued.*

of s. 210 of the Civil Procedure Code, inasmuch as the Court, at the time it made the order, had no power to make any order for instalments, any application for that purpose being then barred by art. 175 of Act ...
ther
mad
Sah
from ABDUL RAHMAN SODAGUR *v.* DULLARAM MARWARI . . . I. L. R., 14 Calc., 348

338. ———— *Order for payment of decree by instalments.*—The provision of s. 20, Act XIV ... sent right to ... an instalment ... the latter cas ... ree

339. ———— *Decree awarding payment by instalments.*—When a decree awards payment by instalments, to be made at particular specified dates, the date when each instalment becomes due is to be deemed the date of the decree in respect of that instalment for the purpose of calculating the time within which execution may be issued to enforce payment of it UTTAMRAM MANIKRAM *v.* GIRDHARLAL MOTIRAM . 6 Bom., A. C., 45

RAM SUDOY GHOSE *v.* RAJBULLUBH SAHA [15 W. R., 547

TINCOWRIE DOSSEE *v.* UMBIKA CHURN ROY CHOWDHRY . . . . 23 W. R., 41

SHEO JALUN *v.* GUNESH . . 2 Agra, 237

PANAMCHAND VALAD SURAJMAL *v.* BHIVRAJ VALAD DASHRAT . . . 6 Bom., A. C., 38

340. ———— *Execution of decree for maintenance payable by instalments.*—Process of execution cannot always be issued for three years' ...

the date at which the second instalment or subsequent instalments became due. LAKSHMI AMMAL *v.* SASHADRY AIYANGAR . . 4 Mad., 275

See SINTHAYEE *v.* THANAKAPUDAYEN [4 Mad., 183

341. ———— *Execution of decree payable by instalments.*—The decree provided that the amount should be paid in three instalments, and in default of payment of one instalment the decree-holder was empowered to execute his decree for the whole am... 1865 fel... and obta... 1866. O... execution ... and 1867,—*Held* that the instalment for 1866 was not barred by lapse of time. KRISHNA CHANDRA SHAHA *v.* OMED ALI . . 6 B. L. R., Ap., 31

S. C. KRISTO CHUNDER SHAHA *v.* OOMED ALI [14 W. R., 414

342. ———— *Bond payable by instalments.*—Upon an application for execution being made, the judgment-debtor executed in Court an instalment bond, by which he bound himself to pay his debt by half-yearly instalments in the months of Magh (January and February) and Bhadra (August and September) of each year, and it was stipulated ... the whole

that the time ran from January and February 18... UPENDRA MOHAN TAGORE *v.* TAKALIA BEPARI [2 B. L. R., A. C., 345

S. C. WOOPENDRO MOHUN TAGORE *v.* TAKALIA BEPAREE . . . . . 11 W. R., 570

343. ———— *Decree payable by instalments—Limitation Act, 1871, art. 75.*—A decree payable by instalments, with a proviso that, in default of payment of any one instalment, the whole amount of the decree shall become payable at once, is ... not made within ... stal- ... t of ... the ... the judgment-creditor a fresh starting-point. DULSOOK RATTACHAND *v.* CHUGON NARRUN [I. L. R., 2 Bom., 356

See GUMNA DAMBERSHET *v.* BHIKU HARIBA [I. L. R., 1 Bom., 125

344. ———— *Decree for money payable by instalments—Adjustment of decree—Civil Procedure Code, 1859, s. 206.*—A decree for the payment of money by instalments directed that, if the judgment-debtor failed to pay two instalments in succession, the decree-holder should be entitled to

LIMITATION ACT, 1877—*continued.*

6. ORDER FOR PAYMENT AT SPECIFIED DATE—*continued.*

enforce payment of the whole amount due under the decree. The decree-holder, alleging that a portion of the ninth instalment was payable, and that the whole of the tenth (the last) instalment was due, applied to enforce payment of the moneys due under the decree.

to interfere in second appeal, inasmuch as the lower Appellate Court had found as a fact that there had been no such default in the payment of the former instalments as was contemplated by the decree. KANCHAN SINGH *v.* SHEO PRASAD

[I. L. R., 2 All., 291

345. ———— *Decree payable by instalments—Default.*—Where a decree was passed by consent in 1872 for payment to plaintiff through the Court of R300 by fifteen annual instalments on

346. ———— *Decree for money payable by instalments—Execution of decree—Held,* in the case of a decree for money payable by instalments, with a proviso that in the event of

347. ———— and art. 75—*De-*

session of such estate. The first default was made on the 18th January 1874, but *L* waived the benefit of the proviso. A fresh default was made, and on the 23rd January 1880 *L* applied for possession of such estate. *Held* that the provisions of cl. 3, art. 75, sch. II of Act XV of 1877, were not applicable to this case, but art 179 (6) of that schedule contained the law which must govern it; and, the date upon which such decree became capable of execution for possession being the 18th January 1874, the date of the first complete default, the application of the 23rd January 1880 was barred by limitation. UGRAH NATH *v.* LAGANMALI

[I. L. R., 4 All., 83

348. ———— *Decree payable by instalments—Execution of whole decree—Payments out of Court—Act X of 1877 (Civil Procedure*

ground that default had been made in payment of the third and fourth instalments The judgment-debtor objected that the application was barred by limitation, as he had made default in payment of the first and second instalments, and three years had elapsed from the date of such default. The decree-holder offered to prove that those instalments had been

Mohan Ghose, 4 B. L. R., F. B., 130, followed. SHAM LAL *v.* KANAHIA LAL I. L. R., 4 All., 316

349. ————*Decree payable by instalments—Default—Waiver—Estoppel—Application for execution as provided for in case of default—Application to recover instalments.*—A decree for the payment of money directed that an amount less than the amount sued for should be paid by instalments, and that, if default were made in pay-

...th May 18.. was struck off the file. The decree-holder subsequently accepted the remaining instalments, which were paid on due dates On the 28th

payable thereunder in case of default, with reference to the default in respect of the instalment for September 1876. The Court refused to allow execution to issue for such amount, but allowed it to issue for

LIMITATION ACT, 1877—*continued.*

6. ORDER FOR PAYMENT AT SPECIFIED DATE—*continued.*

the balance of the instalment for September 1876. *Per* STRAIGHT, *J.*—That, having by his application of the 7th May 1877 sought to execute the decree for the larger amount payable thereunder in case of default in payment of the instalments of the smaller amount, the decree-holder was not competent after-

limitation. *Per Curiam.*—That the decree-holder was not entitled to recover the balance of the instalment for September 1876, regard being had to the limitation prescribed by No. 179 (6), sch. II of the Limitation Act, 1877. RADHA PRASAD SINGH *v.* BHAGWAN RAI . . I. L. R., 5 All., 289

350. ———— *Decree payable by instalments—Execution of whole decree—Construction of decree—Payments out of Court—Civil Procedure Code, s. 258.*—A decree passed against the defendant in a suit, dated the 13th March 1877, directed "that the plaintiff should recover the decree-money by instalments, agreeably to the terms of the deed of compromise, and he, in case of default, should recover in a lump sum." The compromise

instalments had been paid, but not any of the succeeding instalments, and they claimed to recover, under the terms of the decree, the fifth and all the remaining instalments in a lump sum. The judgment-debtors contended that the application was barred by limitation, as they had not paid a single instalment, and more than three years had elapsed from the date of the first default; and that, even if the first four instalments had been paid, such pay-

Held also that recognition of such instalments was

351. ———— *Decree payable by instalments—Waiver by decree-holder—Payment out of Court—Civil Procedure Code, s. 258.*—An application for execution of a decree payable by instalments was resisted by the judgment-debtor as barred by limitation on the ground that nothing had been paid under the decree, and that the application

LIMITATION ACT, 1877—*continued.*

6. ORDER FOR PAYMENT AT SPECIFIED DATE—*continued.*

second instalment was due. *Held* that the decree-holder could not raise this plea, as the payment in

Husain v. Bakhtawar, I. L. R., 7 All., 324, not followed. MITTHU LAL *v.* KHAIRATI LAL [I. L. R., 12 All., 569

352. ———— *Debt on decree payable by instalments—Failure to pay—Waiver of default.*—The terms of compromise in a suit for money provided that the debt should be paid by

full decree. The decree was dated the 12th June, ... in July 1875, and

quent payments. On the 10th Decem... applied for execution for the amount then remain-

353. ———— *Decree payable by instalments.*—On an application dated 10th Aughran

... amount of 1255, ... holder ... t being ... realize ... instalment

Dalal v. Kally Churn Mitter, I. L. R., 7 Calc., 56, followed. CHUNDER KOMAL DASS *v.* BISSASHWREE DASSIA 13 C. L. R., 243

354. ———— *Decree payable by instalments—Option to execute—Waiver—Construction of decree.*—Where a decree is made payable by instalments, and contains a provision that, on

LIMITATION ACT, 1877—*continued.*

6. ORDER FOR PAYMENT AT SPECIFIED DATE—*continued.*

failure of any one instalment, the whole is to become due, the question whether the decree-holder may waive the benefit of the provision or must execute his decree within three years from the due date of the first instalment of which default is made in payment is a question purely of construction to be decided on the terms of the whole decree in each case. On an application for execution of a decree made payable by instalments,—*Held* that the application was barred by limitation, on the ground that the judgment-creditor should have applied for execution within three years from the date of the first default in payment. JUDHISTIR PATRO *v.* NOBIN CHANDRA KHELA . . . . I. L. R., 13 Calc., 73

355. ———— *Default in payment of instalments—Right of decree-holder to waive his right to execute entire decree—Waiver.*—A decree dated the 18th July 1883, which was made against *D* and *K* in terms of a solehnamah filed by them, directed payment by instalments in the month of Choitro (Vilaity year) each year, with

tedly paid the instalments due from him up to Choitro 1292 (March-April 1885) and a portion of

payments not to have been proved. On the 1st September 1890, more than three years after the default made by *D* in Choitro 1293 (March-April 1886) and that made by *K* in Choitro 1294 (March-

were competent to waive it and claim execution in respect of the instalments that fell due within three years before the date of their application for execution. *Held* that this was not the case made out in the Courts below; and further that the proviso could not be said to be waived, as there had been no acceptance of payment subsequent to the first default, nor a mere abstinence on the part of the decree-holder from seeking the benefit of the proviso, but, on the contrary, there had been an affirmative act done by him showing that he did not waive the benefit of the proviso, but claimed to execute the entire decree. *Mon Mohun Roy* v. *Durga Churn Gooee, I. L. R., 15 Calc., 502,* referred to. BIR NARAIN PANDA *v.* DARPA NARAIN PRODHAN

[I. L. R., 20 Calc., 74

LIMITATION ACT, 1877—*continued.*

6. ORDER FOR PAYMENT AT SPECIFIED DATE—*continued.*

356. ———— *Decree payable by*

and the other six instalments on the [illegible] of the months of Magh and Bysack in the three following years. In an application made on 9th February 1892 for execution of the decree, the decree-holder stated that only the first instalment had been paid, and asked for execution for the amount remaining due under the decree, and the judgment-debtors denied having paid any of the instalments. *Held* that the clause in the decree to the effect that on non-payment of an instalment by the specified date it should be in the power of the decree-holder to realize the full amount, was not intended to give him the option of waiving the default if he pleased, but that it implied nothing

the whole amount became due, was barred by art. 179 of sch. II of the Limitation Act. *Chandra Kamal Das* v. *Bissessurree Dassia, 13 C. L. R., 213,* dissented from; and the case was remanded for final decision of the question whether or not payment of the first instalment had been made. *Chenibash Shaha* v. *Sridam Mandal, I. L. R., 5 Calc.,*

ain Panda v. *Darpanarain Prodhan, I. L. R., 20*

...t, although

Procedure

made could

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decree-hol-

purpose of

showing that the execution of the decree was not barred. There is no material difference in this re-

357. ———— *Decree payable by instalments with proviso as to execution of entire decree on default in payment of instalments—*

LIMITATION ACT, 1877—*continued.*

6. ORDER FOR PAYMENT AT SPECIFIED DATE—*concluded.*

Construction of decree.—Where a decree for money is made payable by instalments with a proviso to the effect that on default being made in payment of the instalments, the decree-holder is entitled to execute the decree for the whole amount due, such a decree is to be construed as much as possible in favour of the decree-holder, and unless the decree clearly leaves the decree-holder no option on the happening of a default but to execute the decree once and for all for the whole amount due under it, the decree-holder may execute it on the happening of the first, second, or any subsequent default, and limitation will run against him in respect of each instalment separately from the time when such instalment may become due. SHANKAR PRASAD *v.* JALPA PRASAD [I. L. R., 16 All., 371

358. ———— *Decree payable by instalments—Waiver of default in payment—Civil Procedure Code (1882), s. 258.*—Where a decree was payable by instalments, and in default it was provided that the whole amount should become due,—*Held* that proof of a part-payment towards an instalment due accepted by the decree-holder

next default. RAJESWARA RAU *v.* HARI BABANDHU [I. L. R., 19 Mad., 162

359. ———— *Transfer of Property Act (IV of 1882), s. 90—Application for decree against non hypothecated property—Starting point of limitation.*—Where in a usufructuary mortgage it was covenanted that if the mortgagee was not given possession he should have a right to obtain the sale of the mortgage property, the mortgage-debt meanwhile being payable on a certain specified date, it was *held* that in respect of an application under s. 90 of Act IV of 1882,

7. JOINT DECREES.

(*a*) JOINT DECREE-HOLDERS.

The following are the cases decided as to the proceedings in joint decrees under the Acts of 1859 and 1871:—

360. ———— expl. I—*Application by one of several decree-holders.*—Every application made by one or more out of several decree-holders is an application made in the interests of all, and every proceeding taken by one is a proceeding taken for the benefit of all to enforce the judgment, or to keep it

LIMITATION ACT, 1877—*continued.*

7. JOINT DECREES—*continued.*

in force. ROY PREEONATH CHOWDHRY *v.* PRANNATH ROY CHOWDHRY . . 8 W. R., 100

DHANESSUREE *v.* GOODHUR SAHOY [11 W. R., 431

BHOOBUNESSUREE DEBIA *v.* CHUNDER MONEE DEBIA . . . . . 21 W. R., 243

HURUCK ROY *v.* ZUHOOREE MULL [22 W. R., 468

OUDH BEHARI LAL *v.* BRAJAMOHAN LAL [4 B. L. R., Ap., 41: 13 W. R., 128

JOHIROONISSA KHATOON *v.* AMEEROONISSA KHATOON . . . . . 6 W. R., Mis., 59

INDURJEET KOONWAR *v.* MAZAM ALI KHAN [6 W. R., Mis., 76

361. ———— *Arrangement by decree-holders amongst themselves.*—In the case of a joint-decree, any arrangement made by the decree-holders amongst themselves as to their relative shares in the amount of the decree would not alter its character, and *bonâ fide* proceedings taken by one of the number to execute the decree would keep alive the rights of all the decree-holders. INDURJEET KUNWAR *v.* MAZAM ALI KHAN . . . . . . 6 W. R., Mis., 76

BRIJO COOMAR MULLICK *v.* RAM BUKSH CHATTERJI . . . . . . 1 W. R., Mis., 1

362. ———— *Application after death of some of decree-holders—Civil Procedure Code, 1859, s. 207.*—A joint decree for damages was obtained by several plaintiffs in the Court of the Principal Sudder Ameen of Patna in 1854, and was kept alive by endeavours to execute it till 1861. On the 15th June 1861 the Court passed an order modifying the costs of the original decree, but this order was reversed on appeal on the 19th August 1863.

and he reversed that order, and required from the present decree-holders a certificate of heirship, which they obtained on the 16th September 1865. On the 20th of the same month an order for execution was made by the Principal Sudder Ameen, but it was

Appellate Court was reversed. . . . RAJNARAYAN SINGH . 1 B. L. R., A. C., 63

S. C. TEJA SINGH *v.* POKHUN SINGH [10 W. R., 95

LIMITATION ACT, 1877—*continued.*

7 JOINT DECREES—*continued.*

363. ——— *Separate taking out of execution—Civil Procedure Code, 1859, s. 207.—*

KHATUN v. SHASHI BHUSHAN BOSE [2 B. L. R., Ap, 47: 11 W. R., 343

holders to whom one moiety had been assigned could keep the decree alive for the benefit of the others. CHOOA SAHOO v. TRIPOORA DUTT 13 W. R., 244

365. ——— *Application by one decree-holder for execution.*—Where one of several

MUL . . . . 22 W. R., 468

366. ——— *Application to execute part of decree.*—An application to execute an aliquot part of a decree, though irregular and in- ... *bona fide* ... egarded as ... KOYLAS

[15 W. R., 449

SHIB CHUNDER DASS v. RAM CHUNDER PODDAR . . . . 16 W. R., 29

PRAN KISHORE DEB v. KISHORE CHUNDER CHOWDHRY. . . . . . 16 W. R., 267

DOYA MOYEE DABEE v. NILMONEE CHUCKERBUTTY . . . . . . 25 W. R., 70

367. ——— *Application for partial execution of joint decree—Costs.*—An appli-

Sudder Court awarded costs in the lower Court to

set of defendants, a subsequent application by him and the other defendants for execution of the decree was held to be barred by limitation. RAM AUTAR v. AJUDHIA SINGH . . I. L. R., 1 All., 231

368. ——— *Application by one of two joint decree-holders for part execution of joint decree—Act X of 1877 (Civil Procedure*

of two persons, in whose favour a decree for money had been passed jointly, applied on the 27th April 1880 for execution of a moiety of such decree, and

had expired. COLLECTOR OF SHAHJAHANPUR v. SURJAN SINGH . . . I. L. R., 4 All., 72

369. ——— *Application by two of three joint decree-holders for part execution of joint decree—Acquiescence by judgment-debtor in part execution.*—A decree for money was passed in

Limitation Act. *Mungul Pershad Dichit v. Grija Kant Lahiri, I. L. R., 8 Calc., 51,* followed. NANDA RAI v. RAGHUNANDAN SINGH I. L. R., 7 All., 282

370. ——— *Application for partial execution of joint decree.*—Although the Civil Procedure Code does not allow one of several decree-holders to apply for the partial execution of a joint decree, yet an application by one of such decree-holders for execution of the decree in respect of so much of the relief granted to all as he considers

371. ——— *Application for partition under decree—Decree for partition.*—A consent decree for partition made between three parties contained a provision that, if the plaintiffs should not have the property partitioned within two months from the date thereof, any one of the other

LIMITATION ACT, 1877—*continued.*

7. JOINT DECREES—*continued.*

but less than three years from the date of the application just mentioned, another of the parties applied for partition under the decree. *Held* that the application was not barred by limitation under the provisions of the Limitation Act XV of 1877, sch. II, art. 179, expl. 1. MOHUN CHUNDER KURMOKAR *v.* MOHESH CHUNDER KURMOKAR [I. L. R., 9 Calc., 568

372. ——— *Decree for partition, Application for execution of—Co-sharers.*—*A*, on

taken on behalf of both, limitation did not apply. KHOORSHED HOSSEN *v.* NUBBEE FATIMA [I. L. R., 3 Calc., 551: 2 C. L. R., 187

373.

374. ——— and ss. 7, 8—*Civil Procedure Code, 1882, ss 231, 258—Disability of—Minority—Execution of decree* —A member of an undivided Hindu family and his two minor brothers (who sued by him as their next friend) brought a suit for partition of family property against their father, and joined as defendants certain persons who were in possession of part of the property under alienations made by the father, but alleged in the plaint to be invalid as against the family. In 1875 a decree was passed in favour of the plaintiffs in the above suit. No application for the execution of the decree was made by either the first or second plaintiff; but the third plaintiff, having attained his majority in June 1881, applied for execution in April 1884: his application was opposed by two of the defendants. The District Judge made an order granting his application in respect of the one quarter share to which he was declared to be entitled under the decree. *Held* that the order of the District Judge was wrong. The decree was not one "passed severally in favour of more persons than one distinguishing portions of the subject-matter as payable or deliverable to each"; and as neither s. 7 nor s. 8 of the Limitation Act was applicable to the case, the application was barred by limitation under art. 179 of the Limitation Act. SESHAN *v.* RAJAGOPALA. RAJAGOPALA *v.* SESHAN . I. L. R., 13 Mad., 236

375. ——— *Civil Procedure Code, ss. 231, 232—Assignment of decree by operation*

ted. It appeared that the decree-holder's son having obtained against him in 1881 a decree for a share of whatever he should acquire under the decree of 1878, had applied for execution of the last-mentioned decree; and reliance was now placed on that application to save the bar of limitation. *Held* that, assuming the decree of 1881 had effected an assignment by operation of law of the decree of 1878, the father and son were not joint decree-holders within the meaning of Civil Procedure Code, s. 231, and the father's application for execution was barred by limitation. RAMASAMI *v.* ANDA PILLAI . I. L. R., 13 Mad., 347

This decision was set aside on review, and it was held on the facts as then presented to the Court that the decree was not a joint decree, and that no question therefore arose as to the effect of expl. I to art. 179 of the Limitation Act. RAMASAMI *v.* ANDA PILLAI [I. L. R., 14 Mad., 253

(*b*) JOINT JUDGMENT-DEBTORS.

376. ——— *Decree declaring separate liability—Proceeding to keep decree alive.* — Where a decree was passed against several defendants, each of whom is declared to have a separate liability in respect of a definite amount, execution against one or more of such judgment-debtors keeps the decree in force against all simultaneously. MOHESH CHUNDER CHOWDHRY *v.* MOHUN LALL SIRCAR . . . . . 8 W. R., 80

377. ——— *Proceeding against some only of judgment-debtors.*—A proceeding against certain of a number of joint judgment-debtors ... certain of them, ... declared ... of s. 23 ... BISWAS ... *v.* TARAMONEE DASSEE . . . ... W. R., 240

378. ——— *Proceedings against some only of judgment-debtors.*—The law makes no distinction between the different defendants liable under a decree; the decree is kept wholly in force if any effectual proceeding is taken under it within the prescribed time to keep it alive. But where a decree, though nominally in one document, really contains separate decrees against separate individuals, the law of limitation may be put into force in

LIMITATION ACT, 1877—*continued.*

7. JOINT DECREES—*continued.*

execution against the different defendants as if there were separate decrees. STEPHENSON *v.* UNNODA DOSSEE . . . . . 6 W. R., Mis., 18

379. ——— *Death of judgment-debtor—Execution—Execution against one of several representatives of a sole debtor—Death of such representative—Subsequent application for execution against other representatives—Practice.*—

out execution on the 18th June 1881, under a darkhast, No. 718 of 1878, against *V*, one of the three sons of the debtor, and the execution-proceedings continued till the death of *V* in March 1884, whereupon the plaintiff applied on the 28th May 1884 to put *M* and *N*, the brothers of *V*, on the record as his representatives,—*Held* that the application was not too late against *M* and *N* regarded as joint representatives, with their brother *V*, of their father, the original judgment-debtor. *Ramanuj Sewak Singh* v. *Hingu Lal, I. L. R., 3 All., 157.* KRISHNAJI JANARDAN *v.* MURARRAV [I. L. R., 12 Bom., 48

380. — *cution of deceased* ecution of representa takes effect, for the purposes of limitation, against them all. RAMANUJ SEWAK SINGH *v.* HINGU LAL [I. L. R., 3 All., 157

381. ——— *Decree against two persons specifying period for which each was liable —Execution against one.*—Where a decree was given for arrears of rent against two persons, and one of them was afterwards declared on appeal to be liable for the rents for a certain period only, and execution was taken out against him only,—*Held* that the

of limitation applying to bar execution against the other. WISE *v.* RAJNARAIN CHUKERBUTTY [1 B. L. R., F. B., 258: 10 W. R., 30

KHEMA DEBEA *v.* KAMOLAKANT BUKSHI [10 B. L. R., 259 note: 10 W. R., 10

382. ——— *Surety—Separate liability—Proceedings to keep alive decree.*—In execution of decree, the debtors arranged to pay the

have been taken against him from the date when ...cree should ...roceedings ...judgment. [6 W. R., Mis., 44

383. ——— *Application for execution against a surety when a step in aid of execution against a principal—Mode of enforcing payment against a surety.*—*V* was awarded the sum

order against the surety *D* and claimed also interest (R1,635-10-0) and costs (R530-15-4). *D* objected to pay interest or costs, and the High Court held that, as surety, he was liable only for the principal sum, but not to interest or costs. Subsequently, *viz.*, on the 16th February 1897, *K* applied for execution against the principal debtor *V* of the order of the

the surety would not operate to keep alive the order as against the principal debtor unless

cipal sum, and it was only as to that sum that he was jointly liable with Vinayak. The previous application, therefore, for execution against the surety for money for which he was not liable under the order could not be regarded as a step in aid of execution against the principal debtor *V*. The mode of enforcing payment against a surety is by summary process in execution, and not by separate suit. KUSAJI RAMJI *v.* VINAYAK RAMCHANDRA PANSHE [I. L. R., 23 Bom., 478

384. ——— *Application for execution of decree against some of the joint judgment-debtors, out of time—Realization of a portion of the decretal amount by such execution, Effect of, as against other judgment-debtor who was not a party to the execution-proceeding—Application in accordance with law.*—A judgment-debtor, who was not a party to a previous application for execution of a decree or to any order made upon it, is not precluded from showing that the said application was barred by limitation, and that therefore it was not in

LIMITATION ACT, 1877—*continued.*

7. JOINT DECREES—*concluded.*

not a party to the previous execution-proceeding, which was itself barred by limitation, and therefore it had not the effect of keeping the decree alive. HARENDRA LAL ROY CHOWDHRY v. SHAM LAL SEN [I. L. R., 27 Calc., 210

8. MEANING OF PROPER COURT.

385. ——————— expl. II (1871, art. 167)—*"Court," Meaning of—Application to execute decree*—The term "Court" in Act IX of 1871,

386. ——————— *"Court"—Conciliator.*—A conciliator appointed under the Dekkan Agriculturists' Relief Act (XVII of 1879) is not a Court. The presentation therefore to a conciliator of an application for execution of a decree within the period of limitation does not save the limitation, if the application to the proper Court be time-barred: Act XV of 1877, s 14, para. 3, sch. II, art. 179. MANOHAR v. GEBIAPA . I. L. R., 6 Bom., 31

——————— art. 180 (1871, art. 169; 1859, s. 19).

1. ——————— *Decree of Sudder Court, Calcutta.*—The twelve years' limitation was held not to apply to a decree of the late Sudder Court, which was not a Court established by Royal Charter. THAKOOR DOSS GOSSAIN v. KASHEE NATH MUNDUL [12 W. R., 73

HURO PERSHAD ROY CHOWDHRY v. MANICK LUSHKUR . . . . 12 W. R., 343

2. ——————— *Judgment of Judges of Supreme Court sitting as Small Cause Court Judges.*—The judgments of the Judges of the late Supreme Court sitting under Act IX of 1850 (the Small Causes Courts Act) were held to be judgments of a Court established by Royal Charter, and were therefore not affected by Act XIV of 1859, s. 20, but were governed by s. 19. COULTROUP v. SMITH [1 Mad., 204

3. ——————— *Decrees of High Court.*—It was formerly held that the execution of decrees of the High Court was governed as to limitation by s. 19,

LIMITATION ACT, 1877—*continued.*

and not s. 20 or 22, of Act XIV of 1859. MAHATAB CHAND v. TARUCKNATH MOOKERJEE [6 W. R., Mis., 94

ISHAN CHUNDER CHOWDHRY v. JUGODISHUREE [8 W. R., 267

BAPURAV KRISHNA v. MADHAVRAV RAMRAV [5 Bom., A. C., 214

Later rulings, however, are to the contrary—*see infra.*

4. ——————— *Decree of Privy Council.*—S. 19, Act XIV of 1859, applies only to Courts in this country established by Royal Charter, and not to the Privy Council, the execution of whose decrees was subject to the limitation prescribed by s. 20 of that Act. WISE v. JUGOBUNDHOO BABOO [4 W. R., Mis., 10

5. ——————— *Execution of decree of Privy Council—Court established or not established by Royal Charter—Act XXV of 1852, s. 1.*—Per PEACOCK, C.J., TREVOR and L. S. JACKSON, JJ.—A decree of Her Majesty in Council is neither a decree of a Court established by Royal Charter within s. 19, nor a decree of a Court not established by Royal Charter within s. 20 of Act XIV of 1859. Therefore that Act does not apply to such decrees.

v. PURNO CHANDRA ROY [B. L. R., Sup. Vol., 506: 6 W. R., Mis., 69

law of limitation, is twelve years ... Act XIV of 1859. CHOWDHRY WAHID ALI v. MULLICK INAYET ALI 6 B. L. R., 52: 14 W. R., 333

7. ——————— *Execution of decree of High Court on appeal from mofussil.*—A decree of the High Court on appeal from the mofussil must be executed within three years under s. 20, Act XIV of 1859. Such decree is not a decree of a Court established by Royal Charter within the meaning of s 19. RAMCHARAN BYSAK v. LAKHIKANT BANNIK [7 B. L. R., F. B., 704: 10 W. R., F. B., 1

See ARUNACHELLA THUDAYAN v. VELUDAYAN [5 Mad., 215

8. ——————— *Execution of decree of High Court on appeal from mofussil—Portion of* ... decree of ... which ... of 1859. ... R., 205

9. ——————— *Embodiment in final decree of portion affirmed.*—Where the High Court passes

LIMITATION ACT, 1877—*continued.*

whether the decree of the lower Court is reversed or modified or affirmed, the decree passed by the

expressly to embody in a decree of affirmance so much of the decree below as it is intended to affirm, and thus avoid the necessity of a reference to the superseded decree. *Quære*—Can the ruling in *Ananda-*

S. C in lower Court, KISHEN KINKER GHOSE *v.* BURODA KANT ROY . . 8 W. R., 470

JOY NARAIN GIREE *v.* GOLUCK CHUNDER MYTEE [22 W. R., 102

10. ——— *Execution of an order of Privy Council—Order in Council confirming a decree*—Although an order of Her Majesty in Council may confirm a decree of the Court below, that order is the paramount decision in the suit; and any application to enforce it is, in point of law, an application to execute the order and not the decree which it confirmed. Such an application is governed by art. 180, sch II of Act XV of 1877 LUCHMUN PERSAD SINGH *v* KISHUN PERSAD SINGH [I. L. R, 8 Calc, 218: 10 C. L. R., 425

BHOOBCONA ALUMBARI KOER *v.* JOHRAJ SINGH [11 C. L. R, 277

of the Civil Procedure Code (Act VIII of 1859),

ASHOOTOSH DUTT *v.* DOORGA CHURN CHATTERJEE [I. L. R., 6 Calc, 504: 8 C. L. R, 23

12. ——— *of decree—*
Code (Act
obtained a

LIMITATION ACT, 1877—*continued.*

made by the High Court was on the 4th February 1879. In April 1879 the decree was transmitted

April 1881 the defendant was in Bombay, and *M,* the decree-holder, obtained a summons calling on

PREMBHAI *v.* TRIBHUVANDAS JAGJIVANDAS [I. L. R., 6 Bom, 258.

GANAPATTHI *v.* BALASUNDARA [I. L. R., 7 Mad., 540

13. ——— *Execution of decree—*

number of applications were made for execution, which were struck off. Another application was made on the 25th July 1887 for execution. On the 28th October 1887 the judgment-debtor filed an objection on the ground that the decree was barred. On the 20th December 1887 the objection was overruled and execution issued, but the

LIMITATION ACT, 1877—*continued.*

decree of which execution was sought was barred by the law of limitation *Held* that the decree which was sought to be enforced was an "Order of Her Majesty in Council" within the meaning of art. 180 of the Limitation Act. *Luchmun Persad Singh* v. *Kishun Persad Sing, I. L. R., 8 Calc., 218 10 C. L. R., 425,* and *Pitts* v. *La Fontaine, L. R., 6 App. Cas., 482,* approved. Art. 180 is independent of s. 230 of the Code of Civil Procedure. S. 230 has no application to decrees made by the High Court in the exercise of its original civil jurisdiction. In art 180, Orders in Council stand in the same category as decrees of Courts established by Royal Charter in the exercise of such jurisdiction. Execution of the decree therefore was not barred by s. 230 of the Code *Mayabhai Prembhai* v. *Tribhuvandas Jagjivandas, I. L. R., 6 Bom., 258,* and *Ganpathi* v. *Balsundara, I. L. R., 7 Mad., 546,* referred to. In art. 180 of the Limitation Act the term "revived" must be read in one and the same sense in connection with the High Court decrees and Orders in Council, and not distributively. Following the interpretation of revivor in *Aushootosh Dutt* v. *Doorga Charan Chatterjee, I. L R., 6 Calc., 504 8 C. L. R., 23,* there having been in the present case an order for execution of the decree made after notice to the judgment-debtor, there was such a revivor as preven-

CHOWDHRY *v.* CHUNDRABATI CHOWDHRAIN

[I. L. R., 20 Calc., 551

14. ———— *Application for execution of decree—Transfer of decree for execution—Revivor—Civil Procedure Code (1882), ss. 223, 230, and 248—Insolvent, Adverse possession of—Attachment.*—A obtained a decree against *B* on the

certified copy of the decree to the District Judge's Court of the 24 Pergunnahs, with a certificate that no portion of

within the

alleging tha

within its

the decree having been transmitted, the judgment-creditor, on the 1st March 1894, applied for the execution of the decree to the District Judge. On the objection of the judgment-debtor that the execution was barred by limitation,—*Held* (NORRIS and GORDON, JJ.) that the application of the 11th December 1893 was not an application for execution, and also that the order of the 19th December 1893 was not an order for execution, and could not operate as a revivor of the decree within meaning of art. 180, sch. II of the Limitation Act. There was no necessity for the issue of a notice under s. 248 upon the application to transfer the decree under s. 223 of the Code, and on that application execution could not have been obtained upon the order of the 19th December 1893. The first application for execution was that made on the 1st March 1894 to the Court to which the certified copy of the decree was transmitted, and that was not within time. The execution of the decree was therefore barred by limitation. *Nilmony Singh Deo* v. *Biressur Banerjee, I. L. R., 16 Calc., 744,* followed. *Ashootosh Dutt* v. *Doorga Churn Chatterjee, I. L. R., 6 Calc., 504,* distinguished. SUJA HOSSEIN *alias* REHAMUT DOWLAH *v.* MONOHUR DAS

[I. L. R., 22 Calc., 921

A review having been granted of this decision, the appeal was re-heard, and on the objections of the judgment-debtor that the execution was barred by limitation, and that he having been declared an insolvent, and the properties having vested in the Official Assignee, the attachment was contrary to law,—*Held* (O'KINEALY and HILL, JJ.) that the

was capable of being attached. *Ashootosh Dutt* v. *Durga Churn Chatterjee, I. L. R., 6 Calc., 504; Futteh Narain Chowdhry* v. *Chandrabati Chowdhrain, I. L. R., 20 Calc., 551,* followed. SUJA HOSSEIN *alias* REHAMUT DOWLAH *v.* MONOHUR DAS

I. L. R., 24 Calc., 244

15. ———— *Judgment entered up under s. 86 of the Indian Insolvent Act (Stat. 11 & 12 Vict., c. 21), s. 86—Execution of such judgment*

insolvent in October 1866, an

entered

Insolvent

R66,10,648 In 1886 it was ascertained by the Official Assignee that certain property belonging to the insolvent's estate was available for the creditors of the estate, and on his application an order for execution against the said property was made on the 5th April 1886 by the Insolvent Court under s. 86 of the Insolvent Act. It was contended that execution was barred by limitation. *Held* that execution on the judgment was not barred. *Per* SARGENT, C.J.—The policy of the Indian Insolvent Act is that the future property of the insolvent should be liable for his debts. That intention would be to a great extent defeated if judgment entered up by the order of the Insolvent Court under s. 86, which is the machinery provided for effecting that object, could only be executed within a limited time. Limitation Acts should not be deemed applicable to judgments entered up under s. 86, unless their language clearly requires it. A judgment entered

LIMITATION ACT, 1877—*continued.*

up under s. 86 of the Insolvent Act, although a judgment of the High Court, is not a judgment entered up in the exercise of the ordinary original civil jurisdiction, nor could the right to enforce the judgment be lawfully released by any person, and therefore art 180 of the Limitation Act did not apply. *Per* WEST, J.—Formerly in England as well as in India the policy of the Insolvent Acts was to make the insolvent perpetually responsible. In England, however, by Stat. 32 & 33 Vict., c. 83,

after his death his estate was free also. Thus the

insolvent Court, but it has been decided that such a judgment is to be deemed a decree of the High Court, and executed as such. It must therefore be subject to the same rules as other decrees of

ranked as a judgment of a chartered Court in the exercise of the ordinary original civil jurisdiction. The same description may be applied to it now, and hence the execution is limited, as in the case of other judgments and decrees of the High Court. The principle of perpetual liability to execution can no

1886, and therefore the right to execution, which arose on the date of that order, was not barred by art. 180 of the Limitation Act (XV of 1877). IN THE MATTER OF CANDAS NARRONDAS OFFICIAL ASSIGNEE (TURNER) *v.* PURSHOTAM MUNGALDAS NATHUBHOY I. L. R., 11 Bom., 138

Held (on appeal to the Privy Council)—The Limitation Act (XV of 1877), sch II, art. 180, applies to a judgment of a Court for the relief of insolvent debtors entered up in the High Court, in accordance with s 86 of the Stat 11 & 12 Vict., c. 21. Although a Court held under the latter statute determines the substance of the questions relating to the insolvent's estate, the proceedings

LIMITATION ACT, 1877—*concluded.*

discretion, upon special occasions and by special

c. 21, that execution be taken out, a present right

article applicable. IN THE MATTER OF CANDAS NARRONDAS. NAVIVAHU *v.* TURNER [I. L. R., 13 Bom., 520 L. R., 16 I. A., 156

LIQUIDATED DAMAGES.

See CASES UNDER DAMAGES — MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.

See CASES UNDER INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES OR OTHERWISE.

LIQUIDATORS.

See CASES UNDER COMPANY—WINDING UP —DUTIES AND POWERS OF LIQUIDATORS.

See COMPANY—WINDING UP — GENERAL CASES . . I. L. R., 15 Mad., 97

——— Official Liquidator, Assignment of lease by—

See LANDLORD AND TENANT—LIABILITY FOR RENT . I. L. R., 14 All., 176

——— Suit by—

See COMPANY — ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS [I. L. R., 17 Bom., 469, 472

See PLAINT — FORM AND CONTENTS OF PLAINT—PLAINTIFFS. [I. L. R., 17 All., 292 I. L. R., 18 All., 198

LIS PENDENS.

See FOREIGN COURT, JUDGMENT OF. [I. L. R., 19 Mad., 257

See MAHOMEDAN LAW—DEBTS. [I. L. R., 4 Calc., 402

See PARTIES — PARTIES TO SUITS—PURCHASERS . . . 7 W. R., 225 [11 Bom., 64

——— Application of doctrine [illegible]

LIS PENDENS—*continued.*

former, it is necessary to institute a fresh suit. KASSIM SHAW v. UNNODAPERSHAD CHATTERJEE [1 Hyde, 160

2. ——— ——— The doctrine of *lis pendens* is in force in British India. LAKSHMANDAS SARUPCHAND v. DASRAT I. L. R., 6 Bom., 168

GULABCHAND MANICKCHAND v. DHANDI VALAD BHAU . . . . . . 11 Bom., 64

3. ——— ——— *Principle of doctrine—Registered and unregistered conveyances*—The doctrine of *lis pendens* rests, as stated by Turner, *L.J.*, in *Bellamy* v *Sabine*, not upon the principle of constructive notice, but upon the fact that it would be plainly impossible that any action or suit could be brought to a successful termination if alienations *pendente lite* were permitted to prevail. This reason for refusing recognition to alienations *pendente lite* made by a party to a suit is as fully applicable in the case of a registered as of an unregistered conveyance. LAKSHMANDAS SARUPCHAND v. DASRAT [I. L. R., 6 Bom., 168

4. ——— ——— *English law, Ap-* ... *le aliena-* ... one-half ... ble estate sued to set aside alienations made by the widow of one of three executors acting as managers; her husband, the deceased executor, being legatee of one-sixth. The alienations were made pending a suit by the same plaintiff in the Supreme Court to administer the entire estate, and to expose defalcations and frauds ...

... MURTHI . . . . I. L. R., 5 Mad., 371

6. ——— ——— *Assignment of mortgages—Suit for possession*—*N* being mortgagee ...

the plaintiff's right to property actually sought to be recovered in the suit. BRAHANNAYAKI v. KRISHNA [I. L. R., 9 Mad., 92

7. ——— ——— The effect of a *lis pendens* in India considered. KRISHNAPPA VALAD MAHADAPPA v. BAHIRU YADAVRAV [8 Bom., A. C., 55

SAM v. APPUNDI IBRAHIM SAIB . 6 Mad., 75

8. ——— ——— *Possession of pro-* ...

DOOLEE CHAND . . . 22 W. R., 547

9. ——— ——— *Maxim, "Pendente lite nihil innovetur."*—The rule "*Pendente lite nihil innovetur*" is in force in British India. Where the owner of a house, during the pendency of a suit by an unregistered mortgagee for foreclosure and sale, mortgaged the same house by a registered mortgage to another person, it was held that the last-mentioned mortgagee had no title as against the purchaser under a decree for sale in the suit, although such purhaser was the plaintiff in the suit. A grantee or vendee of the defendant, becoming such during the pendency of the suit, need not be made a party to the suit; and, inasmuch as the above-mentioned rule does not rest upon the equitable doctrine as to notice, it is a matter of indifference whether or not, at the time of his becoming grantee or vendee, he had actual notice of the existence of the suit. GULABCHAND MANICKCHAND v. DHONDI VALAD BHAU . . . . 11 Bom., 64

10. ——— ——— *Possession under a subsequent mortgage created during the pendency of a suit by a prior mortgagee.*—A sale or mortgage *pendente lite* is invalid as against the plaintiff, ... a disability ... the plaintiff ... omes a pur- ... cy of the ... mortgagee suit, whether or not the ... *pendente lite* has knowledge of the prior sale or ... pending, or of ... odapershad ... *Fruval* v. ... , 114, fol- ... [11 Bom., 24

11. ——— ——— *Sale pendente lite—Right of purchaser—Mortgage.*—On the 31st August 1861 *A* mortgaged his house to *B*, who brought a foreclosure suit, and on 7th July 1866 obtained a decree against *A* for the sale of the house ... before the ... been paid, ... 15th July ... brought by ... use, on the ... 2nd August ... ion money ... 1866, at an execution sale ... decree against *A*,—*Held* that, even if there had been

LIS PENDENS—*continued.*

dente lite, was completely subject to any decree which might be made in the mortgage suit. RAOJI NARAYAN *v* KRISHNAJI LAKSHMAN 11 Bom., 139

12. ——— *Sale in execution of decree—Purchaser, Right of.*—The purchase of property in the mofussil at a sale in execution of decree is valid, notwithstanding a decree for sale of the property in a suit for foreclosure pending in the High Court at the time of sale, to which the purchaser was not a party. ANANDAMAYI DASI *v* DHARENDRA CHANDRA MOOKERJEE

[8 B. L. R., 122: 14 Moore's I. A., 181
16 W. R., P. C., 19

Affirming the decision of the High Court in ANNUND MOYEE DOSSEE *v.* DHURUNDHO CHUNDER MOOKERJEE . . . . . 1 W. R., 103

13 ——— *Suit for partition—Right of purchaser.*—Three brothers, *L M B*, *P K B*, and *G D B*, being jointly entitled in equal shares to an undivided one-third share in certain

tiff, including that previously mortgaged to *R N*. On 8th and 9th December the agreement was performed by conveyances, in which *R N* joined, and which recited that he had been paid off; and on 28th November 1866 and 27th March 1867 the three brothers conveyed their equities of redemption to the

plaintiff sought to recover in the present suit was

JAHURBI . . . . . 8 B. L. R., 474

14. ——— *Suit for account against executor—Sale by Sheriff in execution of decree—Right of purchaser at Sheriff's sale against purchaser at sale by mortgagee.*—In 1855 a decree for an account was passed, in the Supreme Court at Calcutta, against *A*, an executor. *A* died in 1856, and the suit, which was revived against his representatives, came on for consideration on further directions on the 29th of August 1866. It was then found that *A*'s estate was liable for R1,32,406-11-8, and his representatives were ordered

LIS PENDENS—*continued.*

to pay this money into Court. The representatives having made default in payment, a writ of *fieri facias* was issued, under which certain property was sold by the Sheriff of Calcutta and conveyed by him to *B* on the 1st of April 1867. Previously to this, the representatives of *A* had, on the 11th of January 1865, mortgaged the same property, together with other lands, "for the purpose of paying the Government revenue of certain taluqs belonging to *A*, deceased;" and the mortgagee having obtained a decree on his mortgage, the property was sold to *C* in execution of the mortgage decree on the 30th of March 1867. In a suit for possession by *C* against *B* the latter pleaded *lis pendens* *Held* that the nature of the suit, in which the decree of 1855 and the subsequent order of 1866 were passed, was not

10 C. L. R., 113

15 ——— *Purchase pendente lite—Right of purchaser against mortgagee of property.*—Plaintiff purchased at a sale by the District Munsif's Court of Guntur, held on the 22nd of December 1868, the interest of one *F G* in a cotton screw at Guntur. Previous to this, on the

September 1869 found this issue in the affirmative, and declared that the amount sued for should be paid from the aforesaid shares hypothecated to the plaintiff in that suit. At a sale in execution of this decree, the share of *F G* in the screw at Guntur was purchased by 2nd defendant (in the present suit) on the 18th of February 1870 The present plaintiff objected to the sale and was referred to a regular suit Accordingly he brought the present suit to set aside the decree in No 16 of 1867 as regards the share of *F G* in the screw at Guntur, to cancel the attachment and sale to second defendant, and for

treating the claim of the plaintiff in No. 16 of 1867 as a mortgage, held that, as it was prior in point of time to the sale under the Munsif's decree, it should prevail against plaintiff's claim, even though plaintiff

LIS PENDENS—*continued.*

had not notice. The Court also found that plaintiff had notice. Upon appeal,—*Held* that, as the purchase made by the plaintiff was made while the suit No. 16 of 1867 was pending, in which a mortgage was alleged and payment was prayed out of the property, the plaintiff was bound by the decree made therein, whether he had or had not notice, nor could he in any way question that decree MANUAL FRUVAL *v.* SANAGAPALLI LATCHMIDEVAMMA [7 Mad., 104

16. — — — — *Notice—Right of purchaser pendente lite as against person whose lien has been declared in suit to which the purchaser was no party—Notice.*—Suit to recover possession of a mutah from which plaintiff had been ejected by an order of Court, passed in execution of the decree in a suit to which he was no party. Plaintiff claimed under a deed of sale from *A* (a purchaser from *C* and *D*), dated 11th November 1860, and alleged that he purchased for valuable consideration and without notice of any other claim Defendant asserted that plaintiff purchased fraudulently with notice of her late husband's right of purchase It appeared that defendant's husband had sued *C D* and others to enforce a lien upon the mutah, and obtained a judgment of the Privy Council upholding his lien and declaring its priority over the purchase of *C* and *D*. This suit was pending before the Privy Council at date of plaintiff's purchase In 1862 defendant's husband sued *C* and *D*

had agreed to sell the mutah. The present plaintiff

The Civil Judge decided in favour of plaintiff. *Held,* confirming the decree of the lower Court, that this was a case of a vendee of property, perhaps subject to a lien, turned out upon a decree against other

17. —— *Purchase pendente lite—Right of suit.*—*T*, having obtained a decree against the heirs of *H*, attached certain property in execution. *P*, one of the heirs, objected

property sold. *P* appealed to the High Court, which passed a judgment in her favour. *Held* that the sale of the property was one *pendente lite*, and, as such, subject to the final result of the suit between the parties; and that *P* had a right to come into Court as against the purchaser and establish her title to the property. INDERJEET KOOER *v.* POOTEE BEGUM . . . . . 19 W. R., 197

18. —— *Purchaser under execution sale.*—In a suit for rent by the auction-

landlord and tenant, contending that the property had been purchased by himself at a sale in execution of a decree which he had obtained upon a mortgage-bond, *i.e.*, a money-bond with a clause creating a charge upon the property. The suit on this mortgage was commenced after the attachment upon which the property was sold to the plaintiff, but was pending when the plaintiff purchased. *Held* that the mortgagors were bound by the proceedings in the suit including the attachment and sale, and the defendant had a good title against the plaintiff in the same manner as against the mortgagors whose interest the plaintiff purchased, even if the certificate of sale was not registered. A purchaser under an execution is bound by *lis pendens*, for it would be impossible that any action or suit could be brought to a successful termination if alienating *pendente lite* were permitted to prevail. RAJ KISHEN MOOKERJEE *v.* RADHA MADHUB HOLDAR [21 W. R., 349

19. —— *Patni lease granted pendente lite.*—A patni lease of lands granted by a Hindu widow in possession upheld, though made pending an equity suit brought by her against her husband's executors. BISSONATH CHUNDER *v.* RADHA KRISTO MUNDUL . 11 W. R., 554

20. —— *Purchase of property on which there is a decree in suit on a mortgage-bond—Suit for possession against purchaser from mortgagor.*—The plaintiff in 1877 obtained a decree on a mortgage-bond, in execution of which property belonging to his debtor was put up for sale and purchased by the plaintiff on 5th May 1878. The defendants had, in execution of a subsequent

defendants were purchasers *pendente lite*, and consequently bound by the proceedings in the plaintiff's suit on the mortgage-bond. JHABOO *v.* RAJ CHUNDER DASS . . I. L. R., 12 Calc., 299

21. —— *Sale in execution of decree—Auction-purchaser—Res judicata.*—*A*, the auction purchaser of certain immoveable property at a sale in execution of a decree, purchased with notice that a suit by *H* and *M* against the judgment-debtor and the decree-holder for a share in such property was pending, but did not intervene in such suit. Before the sale to *A* was made absolute, *H* and *M* obtained a decree in the suit for a moiety of the share claimed by them. *A* took no steps to get such decree set aside, but sued them to establish his

LIS PENDENS—*continued.*

right to such moiety in virtue of his auction-purchase. It appeared that the Court which passed the decree in favour of *H* and *M* did so without jurisdiction. *Held* that, inasmuch as the suit in which such decree was made was tried and determined by a Court having no jurisdiction, it could not be held that *A* was bound by such decree, and that it could not be said that *A* was bound to take steps to get such decree set aside by means of appeal, or that, because he had omitted to do so, it had become binding on him and his suit was precluded. *Quære*—Whether the doctrine of *lis pendens* applies in the case of a purchase in execution of decree. ALI SHAH *v.* HUSAIN BAKHSH . . I. L. R., 1 All., 588

It was held it does not. NUFFUR MERDHA *v.* RAM LALL ADHICARY . . . 15 W. R., 308

22. ———— *Sale in execution of decree—Purchaser, Rights of—Decree by*

[illegible]

s to ... ort- ... to ... the ... of redemption—and does not acquire the property free from the incumbrance created by the debtor LALA KALI PROSAD *v.* BULI SINGH

I. L. R., 4 Calc., 789: 3 C. L. R., 396

23. ———— *Applicability of the doctrine to a Court sale in execution of a*

[illegible]

LIS PENDENS—*continued.*

Court sale in execution of a decree, he derived title, not from *P*, but by operation of law; secondly because *P* was not the person against whom the

[illegible]

24. ———— *Presentation in Court of award—Assignment pending such proceedings.*—*P* and his partners mortgaged certain immoveable property to plaintiff on the 11th October

[illegible]

Court on the 23rd February 1874. Meanwhile, on the 14th February 1874, the property was attached in execution of a money-decree obtained by a creditor of *P* and his partners against them. On the 15th April 1874 it was sold by auction and pur-

[illegible]

performance of the contract of mortgage, and the proceedings consequent thereon constituted a *lis*

[illegible]

25. ———— *Mortgage by executors—Suit on mortgage—Administration suit—Writ of fi-fa—Sheriff's sale—Sale in execution of decree.*—In a suit by the representatives of *P D* against his brother *A D*, and after *A D*'s death against his executors, it was found that there was

[illegible]

on the 18th of July 1867. Previously, however, on the 12th of October 1866, the executors had mortgaged the same property to the plaintiff, who brought a suit on his mortgage on the 10th of June 1867. On the 28th of August 1867 the present defendants were made parties to that suit, and in their written statement they alleged that they had been improperly made parties, and claimed a title superior to that

LIS PENDENS—*continued.*

of the plaintiff. That suit was dismissed with costs as against the present defendants, on the ground that they were improperly added, but a decree for sale was given against the executors, in execution of which the mortgaged property was sold to the plaintiff. In a subsequent suit brought by the plaintiff for possession,—*Held* that the defendants were entitled to redeem, and were not affected by the suit of 1867 as a *lis pendens* CHUNDER NATH MULLICK v. NILAKANT BANERJEE . . I. L. R., 8 Calc., 690

26. ———————— *Sale in execution of decree—Prior attachment*—On the 29th June 1876 the plaintiff obtained a money-decree by consent against *R*, the father-in-law of the defendant. On the 24th of July 1876 the plaintiff attached a house apparently belonging to *R*. On the 12th October 1876 the defendant sued *R* for maintenance, and alleged that the house in question was the property of her deceased husband and *R*, and she claimed the right to continue to live in it. On the 10th of November 1876, and during the pendency of the defendant's suit against *R*, the house was sold under the plaintiff's decree against *R*, and the plaintiff himself became the purchaser. On the 20th of June 1877 the defendant

plaintiff had placed a prior attachment on the house made no difference. The plaintiff therefore could not eject the defendant during her lifetime. PARVATI v. KISANSING I. L. R., 6 Bom., 567

27. ———————— *Sale pending appeal—Decree reversed—Right of judgment-debtor.*

[I. L. R., 5 Mad., 108

See LATI KOER v. SOBADRA KOER
[I. L. R., 3 Calc., 724

28. ———————— *Perpetual lease—Cultivation of waste land.*—A decree-holder, who has obtained possession of land in suit pending an

29

in equal shares of certain property. In 1869 *B* mortgaged his share to *A* under a mortgage-deed drawn up in the English form. Later on, in 1869,

LIS PENDENS—*continued.*

A brought a suit against *B* for partition, and in 1870 obtained a decree appointing a commissioner of partition and directing the partition. No return was made to this commission, and no actual partition come to In 1873 *A* obtained a decree for an account and for payment, or in default for sale of the property. In 1878 *B*'s share was put up for sale and purchased by *C*, and *C* was put into possession. In 1881 *C* brought a suit against *A* for partition. *Held* that the decree obtained by *A* in 1873 put an end to *B*'s right to redeem unless he paid the

the partition asked for under the suit of 1881 could not be granted. KIRTY CHUNDER MITTER v. ANATH NATH DEY
[I. L. R., 10 Calc., 97: 13 C. L. R., 249

30. ———————— *Mortgage executed during pendency of maintenance suit in which decree is made charging property mortgaged—Transfer of Property Act (IV of 1882), s. 52.*—

property with the maintenance claimed, ... the house in suit to the plaintiff,—*Held* that he was entitled so to do, and that the validity of the mortgage was not affected by the doctrine of *lis pendens*. MANIKA GRAMANI v. ELLAPPA CHETTI
[I. L. R., 19 Mad., 271

31. ———————— *Purchaser at sale in execution of decree—Attachment of property sold ante litem.*—Where the defendant in an ejectment action had bought the village in question at a sale in execution of a decree obtained by the mortgagee against the mortgagors thereof, it appeared that prior to his purchase the plaintiff's vendor had sued to establish against the parties to that decree his title to the village, and had subsequently obtained a decree in his favour. *Held* that the defendant bought *pendente lite*, and was bound by the decree so obtained. That result could not be avoided by showing that the mortgagee decree-holder had attached the village prior to the suit by the plaintiff's vendor. MOTI LAL v. KARAB-UL-DIN
[L. R., 24 I. A., 170
I. L. R., 25 Calc., 179
1 C. W. N., 639

32. ———————— *Decree on mortgage—Sale of mortgaged land pending proceedings*

This mortgage was duly registered. Subsequently to the date of the defendant's mortgage, the plaintiff ... 26th August

LIS PENDENS—*continued.*

however, and pending the plaintiff's execution proceedings, Y and K, on the 14th March 1885, sold the property to the defendant by a registered d ed of sale. The plaintiff now sued the defendant for pos-

effect of the subsequent sale by Y and K to the defendant. (3) As this was a suit for possession, and as Y's share had been mortgaged to the defendant with possession, the plaintiff was only entitled to joint possession of the property with the defendant. He could file a separate suit to redeem defendant. SHIVJIRAM SAHEBRAM MARWADI v. WAMAN NARAYAN JOSHI . I. L. R., 22 Bom., 939

mortgages so transferred to the plaintiff had been executed before or after *the bringing of the above* suit. As regards the mortgages executed before it, the plaintiff, not having been a party to that suit, was entitled to redeem the first defendant, who was purchaser of the decree. As regards the mortgages executed after that suit was brought, the plaintiff was bound by the decree, and his interest in the mortgages, transferred *pendente lite*, passed to the purchaser. On the other hand, persons who have taken transfers of property subject to a mortgage cannot be bound by proceedings in a subsequent suit between the prior mortgagee and the mortgagor, to which they have not been made parties. UMES CHUNDER SIRCAR v. ZAHUR FATIMA

[I. L. R., 18 Calc., 164
L. R., 17 I. A., 201

34. ———— *Suit resulting in proceedings unexpected from its nature and the*

LIS PENDENS—*continued.*

of the properties claimed was released from attachment, the attachment being continued against the other 4-annas share: the order of the Court was simply that "the case be struck off." The decree not being satisfied, the plaintiffs took out execution, and the properties were put up for sale and purchased by the plaintiffs on 27th November 1882. Subsequently in execution of the decree R held against A, the properties were again put up for sale and purchased by R on 14th November 1884. In a suit against R and A for declaration of the plaintiff's title and for possession of the properties,—*Held* that the order of the Court and the

KISHORY MOHUN ROY v. MAHOMED MUJAFFAR HOSSEIN . . . I. L. R., 18 Calc., 188

35. ———— *Auction-purchaser bound by lis pendens.*—K brought a suit against P to recover possession of certain land. Whilst

LIS PENDENS—*continued.*

36. ——— *"Contentious suit"—Transfer of Property Act (IV of 1882), s. 52.—A*, on the 9th September 1883, sold certain immoveable property to *S* for R98-12 by means of a conveyance which was not registered. On the 29th September 1883 *S* instituted a suit against *A* on that conveyance to obtain possession of the property. On the 5th October 1883, when that suit was pending, but before the summons was served on *A*, *A* by a duly registered conveyance sold the same property to *R* for R198-8. In the suit filed by *S*, *A* filed a written statement, but did not further contest it, and *S* obtained a decree and got possession of the property. In a suit subsequently brought by *R* to obtain possession of the property from *S* upon the ground that his registered conveyance was entitled to priority over the unregistered document of *S*, it was contended that, *R*'s purchase having been made

suit or proceeding in existence, the summons in *S*'s suit not having been then served. RADHASAM MOHAPATTRA *alias* MADUN MOHUN MOHAPATTRA *v.* SIBU PANDA . I. L. R., 15 Calc., 647

37. ——— *Transfer of Property Act (IV of 1882), s. 52—"Active prosecution" of suit, meaning of.*—Where the plaintiffs purchased a certain property after the decision but before the drawing up of the decree of the lower

Bibee v. *Nilratna Bose, I. L. R., 8 Calc., 79,* referred to. *Gobind Chandra Roy v. Guru Churn Kurmokar, I. L. R., 15 Calc., 94,* followed. *Inderjeet Koer* v. *Pootee Begum, 19 W. R., 197, Chundee Koomar Lahooree* v. *Gopee Kristo Gossamee, 20 W. R., 204, Kishory Mohun Roy* v. *Mahomed Mujaffar Hossein, I. L. R., 18 Calc.,*

38. ——— *Transfer of Property Act (1882), s. 52—Transfer pendente lite—Time at which a suit becomes "contentious."—Held* that a suit becomes a "contentious suit" within the meaning of s. 52 of the Transfer of Property Act, 1882, at the time when the summons is served on the defendant. *Radhasyam Mahapattra* v. *Sibu Panda, I. L. R., 15 Calc., 647,* and *Abboy* v. *Annamalai, I. L. R., 12 Mad., 160,* followed. PARSOTAM SARAN *v.* SANEHI LAL

[I. L. R., 21 All., 408

39. ——— *Transfer made pending partition suit in which there was a dispute as to shares—Transfer of Property Act (IV of 1882), s. 52.*—After the institution of a partition by a member of a joint Hindu family consisting of six brothers and a mother, but before the summonses were served, one of the sons transferred his share of the property to a third party, who was added as a defendant to the suit. At the time of the transfer both the transferor and transferee had notice of the partition suit on a question having been raised as to what share of the property the transferee was entitled to. *Held* that, inasmuch as both the transferor and transferee had notice of the partition suit at the time of the transfer, and as there was a dispute about the shares, s. 52 of the Transfer of Property Act applied to the case. JOGENDRA CHUNDER GHOSE *v.* FULKUMARI DASSI

[I. L. R., 27 Calc., 77

JOGENDRO CHUNDER GHOSE *v.* GANENDRA NATH SIRCAR . . . . 4 C. W. N., 254

40. ——— *Mortgage—Purchase, without notice, of land declared liable for mortgage-debt by a decree.*—In 1864 *A* mortgaged four shops to the plaintiff's father. Subsequently, however, *A*'s father brought a suit, and obtained a decree declaring that two of these shops were not included in the mortgage. In 1869 the plaintiff's father (the mortgagee) sued *A* upon the mortgage, and prayed in the same suit that certain other land not included in the mortgage-deed might be held liable for his debts in lieu of the two shops. He

High Court,—*Held* that the defendant was a purchaser for value without notice of the plaintiff's decrees, and took the land unaffected by the plaintiff's decrees. There was no equitable lien created by the decree. The *lis pendens*. The *litis contestatio* had ceased. The decree, which was a final one, had terminated the ... and now only remained ... *this case* ... been done ... the ... defendant's purchase in 1876. VENKATESH GOVIND *v.* MARUTI

[I. L. R., 12 Bom., 317

41. ——— *Transfer of Property Act (IV of 1882), s. 52—When a suit becomes contentious—Priority of registered mortgage.*—As soon as the filing of the plaint is brought

LIS PENDENS—*continued.*

to the notice of the defendant, the proceeding becomes contentious, and any alienation subsequent to that is subject to the doctrine of *lis pendens.* A mortgage was executed on 25th June and was registered. On the same day, a prior mortgagee filed a suit against the mortgagors on an unregistered mortgage of the same land he obtained a decree and attached the mortgage property. *Held* that the registered mortgagee was entitled to priority, and his mortgage was not affected by the rule of *lis pendens.* ABBOY *v.* ANNAMALAI . **I. L. R., 12 Mad., 180**

42. ——— *Transfer of Property Act (IV of 1882), s. 52—Partition, suit for—Decree by consent.*—Pending a suit for partition of land, etc., two of the parties to the suit sold part of the land in question to a stranger who was not brought on to the record. After the execution of the sale-deed, the parties to the suit entered into a compromise, and a decree was passed by consent accordingly. In a suit by the purchaser for possession of the land sold to him,—*Held* the purchaser was not bound by the decree passed by consent. VYTHINADAYYAN *v.* SUBRAMANYA . . **I. L. R., 12 Mad., 439**

43. ——— *Transfer of Property Act, s. 52—Lease granted during partition suit.*—S. 52 of the Transfer of Property Act does not apply to a case where the shares of the parties and their right to those shares are not disputed. The mode in which the lands should be allotted amongst the ascertained sharers does not affect the right to any specific property. KHAN ALI *v.* PESTONJI EDULJEE GAJDAR . . **1 C. W. N., 62**

44. ——— *Transfer of Property Act, s. 52—Mortgage.*—Of the three owners of certain properties, two executed a mortgage of their interest in December 1872. In 1879 a creditor

defendant became the purchaser. The mortgagee

purchase was subject to the doctrine of *lis pendens.* KUNHI UMAR *v.* AMED . **I. L. R., 14 Mad., 491**

45. ——— *Transfer of Property Act, ss. 52, 53—Contribution, Suit for.*—Two properties A and B, belonging to different owners, were mortgaged under a joint bond for the same debt. The mortgagee put his bond in suit, and, having obtained a decree, caused property A to be sold, the proceeds of which proved more than sufficient to satisfy the whole mortgage-debt. Before such sale, however, *X* had, in execution of a simple money-decree, acquired a share in property A. *X* accordingly sued for contribution from property B, in that, so far as his share in property A went, he had satisfied the mortgage-debt, and ultimately obtained a

LIS PENDENS—*concluded.*

decree in his favour; but during the pendency of that litigation, property B had been transferred to *Y*. *Held* that *Y* must take the property subject to *X*'s right to contribution from it in respect of the loss of his share in property A. BALDEO SAHAI *v.* BAIJ NATH . . . **I. L. R., 13 All., 371**

46. ——— *Transfer of Property Act (IV of 1882), s. 52—Lease of property in respect of which a decree for sale has been made under s. 88.*—*Held* that a lease of property made by a judgment-debtor against whom a decree for sale had been made under s. 88 of the Transfer of Property Act for sale of that property came within the purview of s. 52 of the Transfer of Property Act. THAKUR PRASAD *v.* GAYA SAHU **[I. L. R., 20 All., 349**

47. ——— *Involuntary alienation—Execution-proceedings under mortgage-decree—Revenue Sale Law (Act XI of 1859), ss. 13, 54—Sale for arrears of Government revenue.*—A decree was obtained for the sale of a mortgaged property, being a share of an estate, on the 31st August 1889. In execution of that decree, the property was purchased by the plaintiffs on the 11th December 1891,

purchased by them, the defendants having questioned the validity of the mortgage decree and contended that they were not bound by it, not being parties thereto, and having in the alternative claimed the right to redeem the mortgaged property,—*Held* that the defendants were bound by the mortgage-decree, the principle of *lis pendens* applying to the case. HAR SHANKAR PRASAD SINGH *v.* SHEW GOBIND SHAW . . **I. L. R., 26 Calc., 966 [4 C. W. N., 317**

LIST OF CANDIDATES AT MUNICIPAL ELECTION.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 31
[I. L. R., 19 Calc., 192, 195 note, 198

LIST OF VOTERS AT ELECTION.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 31 . **I. L. R., 22 Calc., 717**

LOAN.

See CONTRACT—CONDITIONS PRECEDENT. **[I. L. R., 14 Bom., 498**

See LIMITATION ACT, 1877, ART. 59. **[I. L. R., 13 Bom., 338**

——— on Security of land—

See BANK OF BENGAL . **7 B. L. R., 653**

LOCAL BOARD.

——— Notice by President of—

See PENAL CODE, s. 188.
[I. L. R., 20 Mad., 1

LOCAL GOVERNMENT.

——— Order of, effect of—

See BENCH OF MAGISTRATES.
[I. L. R., 16 Mad., 410
I. L. R., 20 Calc., 870

See JURY—JURY IN SESSIONS CASES.
[I. L. R., 23 Mad., 632

See MAGISTRATE, JURISDICTION OF—POWER OF MAGISTRATES.
[16 W. R., Cr., 79

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MUNICIPAL TAX.
[I. L. R., 13 Mad., 78

——— Power of—

See BOMBAY SURVEY AND SETTLEMENT ACT (I OF 1865), ss. 3, 48.
[I. L. R., 1 Bom., 352

See GOVERNOR OF BOMBAY IN COUNCIL.
[8 Bom., A. C., 195
I. L. R., 8 Bom., 264

See GOVERNOR OF MADRAS IN COUNCIL.
[2 Mad., 439

See HIGH COURT, JURISDICTION OF—MADRAS—CRIMINAL 5 Mad., 277

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.
[16 W. R., Cr., 79
I. L. R., 9 Mad., 431

——— Rules made by—

See RULES MADE UNDER ACTS.

See PORTS ACTS, s. 6.
[I. L. R., 17 Mad., 118, 397

——— Suit against—

See NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT, s. 28.
[I. L. R., 1 All., 269

1. ——— *Small Cause Court, Mofussil—Civil Procedure Code, ss. 5, 360, ch. XX—Insolvency jurisdiction.*—Under s. 360 of the Code of Civil Procedure, the Local Government cannot invest a Mofussil Small Cause Court with the inso[illegible] by [illegible] of [illegible] Sm[illegible]

2. ——— *Notification of Government of Bombay extending Act, Effect of—Scheduled Districts Act, XIV of 1874, ss. 5, 6.*—Under s. 5 of the Scheduled Districts Act, XIV of

LOCAL GOVERNMENT—*concluded.*

1874 the Local Gov[illegible] [illegible] subject-matter,—viz., the litigation of a new local area. [illegible] with the litigation of Aden alone, could not be extended to Perim, without enlarging the subject- [illegible]

LOCAL INQUIRY.

See DECREE—CONSTRUCTION OF DECREE—MESNE PROFITS.
[I. L. R., 8 Calc., 178
L. R., 8 I. A., 197

——— Criminal—

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—LOCAL INQUIRY.

LOCAL INVESTIGATION.

See CASES UNDER AMEEN.

See APPEAL—ORDERS . 7 W. R., 425
[W. R., 1864, 363

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—SPECIAL CASES . . . 6 B. L. R., 677
[15 W. R., 423
18 W. R., 452

See CHUR LANDS . 6 B. L. R., 677
[13 Moore's I. A., 607

LOCAL INVESTIGATION—*continued.*

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.
[I. L. R., 19 All., 302
3 C. W. N., 607

See CASES UNDER SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—LOCAL INVESTIGATIONS.

See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER.
[I. L. R., 21 Calc., 920
I. L. R., 19 All., 302

1. ———— Object of local investigations—*Evidence not obtainable in Court.*—Local

3. ———— Discretion of Court—*Local inquiry.*—It is within the discretion of a Judge to order or refuse a local inquiry. RASH BEHAREE SINGH *v.* SAHEB ROY . . . 12 W. R., 76

GRAHAM *v.* LOPEZ . . . 1 W. R., 141

5. ———— Power of Court to direct,

land, the Court of first instance suggested to the

6. ———— Notice of local investigation—*Civil Procedure Code, 1859, s. 180.*—Though there was no express direction to that effect in s. 180, Act

LOCAL INVESTIGATION—*continued.*

7. ———— Officer to hold local inquiry—*Civil Procedure Code, 1859, s. 180.*—S. 180, Act VIII of 1859, made it imperative on a Court to employ in the first instance the regular officer of the Court to hold a local inquiry. RAM DOSS KOONDOO *v.* NIL KANTO DHUR . . . 8 W. R., 6

BYJNATH SINGH *v.* INDURJEET KOER
[8 W. R., 331

BAHADOOR ALLY *v.* DOOMNUN SINGH
[7 W. R., 27

Instances of improper appointments are given in DOORGA DOSS CHATTERJEE *v.* GOOROO CHURN MISTREE . . . 6 W. R., Act X, 81

and TEELUCKDHAREE ROY *v.* MOORALEEDUR ROY
[13 W. R., 285

8. ———— Duty of Judge to conduct local investigation—*Civil Procedure Code, 1882, s. 392.*—S. 392, Civil Procedure Code, clearly

9. ———— Question of disputed boundary—*Possession before date of suit.*—*Held* that a local inquiry ought not to have been ordered in this case, where the question to be decided was one of disputed boundary, which turned chiefly on possession before the date of suit, and that the

See ISWAR CHANDRA DAS *v.* JUGAL KISHORE CHUCKERBUTTY . . . 4 B. L. R., Ap., 33
[17 W. R., 473 note

10. ———— Ascertainment of fact of marriage.—In a case where the issue is whether two persons bear the relation of man and wife, a

11. ———— Power of Judge to order

a report cannot be treated as evidence one way or the other. If the Judge was of opinion that it was necessary to take further evidence, he ought to have proceeded as directed by ss. 354 and 355, Act VIII of 1859, and it was competent to him, if necessary, to order an Ameen or any suitable person to make a local investigation under s. 180.

LOCAL INVESTIGATION—*continued.*

But a Judge from whose decision an appeal is pending is the most unsuitable person to make such investigation. ROY SOOLTAN BAHADOOR *v.* LALOO KOOER . . . 7 W. R., 300

12. ——— Incomplete inquiry owing to laches of plaintiff.—In a suit for wasilat, where the Ameen's inquiry was not completed on

13. ——— Duty of Ameen to return report to Court ordering investigation—An appeal having been made from an order relating to the execution of a decree, the High Court directed that an Ameen should deliver over possession and make a map of the property so delivered over, and a map showing the boundaries laid down in the decree. The Ameen went to the spot and made a map. That map was not transmitted to the Court; but in consequence of certain proceedings in the Subordinate Judge's Court, a second Ameen was sent and a second map made. These proceedings were wholly disregarded by the High Court, which proceeded upon the first Ameen's map and report, against which no exception was filed in the High Court. LALLJEE SAHOO *v.* RAJENDER PERTAB SAHEE [14 W. R., 418

14. ——— Investigation by ameen—

authorizes local investigations by ameens when it is necessary to ascertain by measurement disputed areas of land, and that the District Judge had no authority to stay the investigation. *Per* PRINSEP, J.—All that the District Judge was entitled to do under Circular Order No 25, dated 25th August 1870, was to express his opinion as to the propriety or otherwise of the Subordinate Judge's order NIROD KRISHNO ROY *v.* WOOMANATH MOOKERJEE

[I. L. R., 4 Calc., 718: 3 C. L. R., 234

15. ——— Non-attendance at local investigation—*Procedure order setting aside a judgment by default.*—Ss. 111 and 180 are to be read together. The words "and persons not attending upon the requisition of the commissioner" in s. 180 are general and apply to parties making default, whether required to give evidence or not. The words "like disadvantages" referred to in s. 180 mean that in the case of the non-attendance of a defendant the local investigation is to be proceeded with *ex parte*, and in the case of the non-attendance of a plaintiff, the suit is to be dismissed with costs. In case of judgment by default for non-appearance before a commissioner appointed under s. 180, the proper course is to apply to the Judge for an order to set aside the judgment, and if that application be refused, to appeal against the order of refusal. The Judge's order should contain a distinct direction to the commissioner to proceed *ex-parte* in the event of the non-attendance of the plaintiff. ESSAN CHUNDER CHUCKERBUTTY *v.* SOORJO LALL GOSSAIN

[1 Ind., Jur., O. S., 3 W. R., F. B., 1: Marsh., 139

LOCAL INVESTIGATION—*concluded.*

16. ——— *Failure of party to appear on local inquiry*—In a case in which plaintiff sued to recover some land, and in which defendant denied the power of plaintiff's vendor to sell the land claimed or a part of it, a local inquiry was ordered to ascertain the boundaries of the land in dispute Judgment of the High Court—upholding the decision of the lower Court, which dismissed the suit because plaintiff failed to appear or take proper steps before the ameen at the local investigation, and because he omitted to give formal proof of his deed of purchase—confirmed. MAHOMED TUQUE CHOWDHRY *v.* JUDONATH JHA

[16 W. R., P. C., 38

17. ——— Powers of Magistrates in ... *Collection of* ... *idence.* ... rations ... When- ... w the ... tter of a judicial investigation before him, has taken place, he should be careful to confine himself to such a view of the place as to enable him to understand the evidence placed before him, and should take care that no information reaches him with reference to the occurrence which he has to investigate beyond what he acquires by that view, and if the place of ... ce has been ... feels disposed ... enquiry by a Magistrate takes the form of an investigation into ... ence instead of ... the spot. ... as it is pro- ... vidence on ... aw. HARI ... Calc., 920

18. ——— Court proceeding to hear an appeal without waiting for return to a commission for local investigation issued at the request of a party—*Civil Procedure Code, s. 584—Substantial error in procedure*—The intention of the Code of Civil Procedure is that, when a Court deems it necessary, on the application of a party or otherwise, that a commission for local investigation should be issued, the return to that commission should be before the Court before it proceeds to hear and determine the case. MADHO SINGH *v.* KASHI SINGH . . I. L. R., 10 All., 332

LODGING-HOUSE-KEEPER.

See HOTEL-KEEPER AND GUEST. [3 Bom., O. C., 137

See N.-W. P. AND OUDE LODGING HOUSE ACT . . I. L. R., 20 All., 534

LODGINGS LET TO PROSTITUTE.

See LANDLORD AND TENANT—TENANCY FOR IMMORAL PURPOSE [9 B. L. R., Ap., 37

LORD'S DAY ACT.

1. ——— Application of—*British Burma —Abkari rules.*—The Lord's Day Act (29 Car. II, c. 7) does not extend to criminal cases in British [illegible]

2. ——— *Moulmein*—The Lord's Day Act does not apply to Moulmein. GEASEMANN *v.* GARDNER . 3 W. R., Rec. Ref., 2

Nor to Madras.

See ANONYMOUS CASE . 4 Mad. Ap., 62

[illegible]

And *see* Cases under HOLIDAY.

LOST GRANT, PRESUMPTION OF—

See PRESCRIPTION—EASEMENTS—GENERALLY—CLAIM TO PRESCRIPTION. [15 W. R., 212 1 W. R., 230

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR . 3 B. L. R., O. C., 18 [6 B. L. R., 85 ; 12 B. L. R., 406

LOTTERY.

See COMPANY—FORMATION AND REGISTRATION . I. L. R., 20 Mad., 68

——— Foreign Lottery—*Advertisement—Newspapers—Publisher—Penal Code (XLV of 1860), s. 294A.*—The expression "in any such lottery" in para. 2 of s. 294A of the Penal Code (XLV of 1860) means "any lottery not authorized by Government," and includes a foreign lottery. The word "publisher" in the above paragraph includes both the person who sends a proposal as well as the proprietor of a newspaper who prints the proposal as an advertisement. The proprietor of a Bombay newspaper who published an advertisement in his paper relating to a Melbourne lottery was accordingly held to be punishable under s. 294A of the Penal Code. QUEEN-EMPRESS *v.* MANCHERJI KAVASJI SHAPURJI . . . I. L. R., 10 Bom., 97

LOTTERY ACT (V OF 1844).

See PROMISSORY NOTE 9 B. L. R., 441

LOTTERY OFFICE.

——— Charge of keeping—

See ACT XXVII OF 1870. [6 B. L. R., Ap., 96

LOTTERY TICKETS.

See GAMBLING . 12 W. R., Cr., 34

LUNACY.

See EVIDENCE—CIVIL CASES—HEARSAY EVIDENCE . 6 B. L. R., 509 [13 Moore's I. A., 519

See CASES UNDER HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—INSANITY.

See CASES UNDER INSANITY.

See MAHOMEDAN LAW—INHERITANCE. [2 B. L. R., A. C., 306

LUNATIC.

See ARREST—CIVIL ARREST. [I. L. R., 23 Bom., 961

See LETTERS PATENT, HIGH COURT, NORTH-WESTERN PROVINCES, CL. 12. [I. L. R., 4 All., 159

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . I. L. R., 15 Bom., 177

See REGISTRATION ACT, S. 35. [I. L. R., 1 All., 465 L. R., 4 I. A., 166

LUNATIC—*continued.*

——— Committee of, under Act XXXV of 1858.

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—INSANITY . I. L. R., 22 Calc., 864

——— Estate of—

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT . 13 B. L. R., Ap., 14

——— Suit against—

See OUDE LAND REVENUE ACT, ss. 175 AND 176 . I. L. R., 22 Calc., 729 [L. R., 22 I. A., 90

1. ——— Jurisdiction—*Act XXXV of 1858, s 2.*—[illegible] in involuntary [illegible] Asylum, with [illegible] Judge of the 24-Pergunnahs, and was possessed of [illegible]

appointed to the estate. DURANT *v.* CHANDRANATH CHATTERJEE . . 2 B. L. R., A. C., 246

S C. KALLONAS *v.* COLLECTOR OF BACKERGUNGE [11 W. R., 109

2. ——— Married daughter of lunatic —*Act XXXV of 1858, s 13—Maintenance—"Family," Meaning of.*—The word "family" in s. 13 of Act XXXV of 1858 (which provides for the maintenance of the lunatic and his family) does not [illegible]

[illegible]

3. ———Lunatic resident in mofussil —*Act XXXV of 1858, ss 10, 18, and 22—Residence —Guardian of lunatic's person—Position of guardian towards local Court appointing him—Temporary suspension of guardian—Jurisdiction of District Judge—Irregularity—Superintendence of High Court—Civil Procedure Code (1882), s. 622.* —Although Act XXXV of 1858 contains no express provisions as to the place of residence of a lunatic governed by the Act, it contemplates that he shall reside within the jurisdiction of the Court that has found him to be a lunatic. The guardian of such [illegible]

expiration of that time, ordered to return with the lunatic to his residence within the local jurisdiction. He failed to comply with the order. Without further notice, the District Judge, by certain orders

LUNATIC—*continued.*

which he gave, by letter and telegram, through the [illegible]

been made out, and because the lunatic ought not to be removed out of the local jurisdiction. IN THE MATTER OF BASHARAT ALI CHOWDHRY [I. L. R., 24 Calc., 133

4. ——— Application under Act—*Act XXXV of 1858, ss. 2 and 3.*—Applications made under sections of the Lunacy Act, XXXV of 1858, must be verified. BUSRUT ALLY CHOWDHRY *v.* ESHAN CHUNDER ROY . . 7 W. R., 267

5. ——— *Act XXXV of 1858, Procedure on inquiry under.*—The application for an inquiry under the Lunacy Act, [illegible]

avoided. If also he be a person of rank, exempt from personal appearance in Court in *ordinary civil* proceedings, his personal appearance in Court in an inquiry into the state of his mind should be dispensed with. JUGUNNATH SAHEE DEO *v.* BUBBA LALL OPENDRONATH SAHEE DEO [5 W. R., Mis., 54

6. ——— *Act XXXV of 1858,* [illegible] Act XXXV [illegible] lunatic should [illegible] witness, and subjected to examination as a witness by the vakeel of the person on whose petition the inquiry was instituted. IN THE MATTER OF THE PETITION OF JUGGERNATH . . . . 7 W. R., 246

7. ——— *Appearance of lunatic—Act XXXV of 1858.*—A person alleged [illegible] Act XXXV [illegible] or in person.

C. L. R., 13

See BINDABUN CHUNDER KUR CHOWDHRY *v.* KALI DASS SIRCAR . . W. R., 1864, 278

8. ——— *Non-appearance of lunatic after service of summons—Act XXXV of 1858.*—A Judge, instead of striking off a case because an alleged insane person does not appear after service of notice, ought in such event to prosecute the inquiry contemplated by Act XXXV of 1858. MOORUT KOONWAR *v.* DHUEM NARAIN SINGH [3 W. R., Mis., 7

LUNATIC—*continued.*

9. ——————— *Act XXXV of 1858—Procedure necessary before appointing guardian*—A Court cannot, under Act XXXV of 1858, make over charge of the property and person of an alleged lunatic to a guardian until it has adjudged him to be of unsound mind and incapable of managing his affairs. BHOLANATH MOOKERJEE *v.* GRISH MOHINEE DEBIA . . . . . 15 W. R., 259

10. ——— Unsoundness of mind—*Act XXXIV of 1858, s 1—Unsound mind.*—The term "unsound mind" in s 1 of Act XXXIV of 1858 comprehends imbecility, whether congenital or arising from old age, as well as lunacy or mental aberration resulting from disease IN RE COWASJI BERAMJI LILAOOVALA . . . I. L. R., 7 Bom, 15

11. ——— Unsoundness of mind, Proof of—*Act XXXV of 1858—Incapacity to manage affairs—Ascertainment of state of mind by medical examination*—Unsoundness of mind taken by itself is not sufficient to bring a person within the meaning of the term "lunatic" as used in Act XXXV of 1858, unless it would incapacitate him from managing his affairs, nor, on the other hand, will a person who is incapable of managing his affairs be a lunatic, unless that incapacity is produced by unsoundness of mind. For the purposes of this Act, the observation of the patient by medical witnesses,

12. ——————— *Witnesses, Evidence of*—The bare assertion of witnesses unsupported by any details of the causes, the course and the treatment of the malady, ought not to be accepted as satisfactory proof of insanity. KALA CHAND GHOSE *v.* SHOOLOCHUNA DOSSIA . 22 W. R., 38

13. ——— Inquiry as to fact of lunacy—*Power of judicial officer—Evidence.*—On an inquiry as to the fact of lunacy under Act XXXV

14. ——————— *Act XXXV of*

persons interested may, under special circumstances, be permitted to take part. RAM PURGUSS SINGH *v.* AMIR ALI . . . . . 3 Agra, Mis., 3

15. ——————— *Act XXXV of*

16. ——————— *Act XXXV of 1858—Procedure—Power of High Court under Act—Onus probandi.*—Before a Judge can, on the application of a Collector under Act XXXV of 1858, order the property of an alleged lunatic to be placed in charge of somebody else, he must observe the procedure laid down in that Act and pronounce the alledged lunatic to be of unsound mind after institut-

[3 W. R., 475

17. ——————— *Act XXXV of 1858—Inquiry as to state of lunatic's mind*—

[20 W. R., 55

18. ——————— *Act XXXIV of 1858—Degree of unsoundness of mind—Manager of lunatic, duty of.*—A Hindu, who had acquired considerable assets without any ancestral property, lived with one of his wives and his eldest son, who managed the property. A younger son, who lived apart with his mother, made an application to the High Court alleging that his father was a lunatic, and praying that he be declared to be so, and that
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short periods in such a state of mind as to render it right to detain him at home, and that he now had

LUNATIC—*continued.*

application and cf the inquiry. *Held* that the application should be dismissed. *Per Curiam.*—The

of sound mind, subject to occasional unsoundness arising from accidental and temporary causes, considered. IN RE NAGAPPA CHETTI

[I. L. R., 18 Mad., 472

19. ———— *Suit by wife as next friend, alleging husband to be a lunatic—*

band was of unsound mind and (2) as to whether the suit was for his benefit. PRANSUKHRAM DINANATH v. BAI LADKOR . . I. L. R., 23 Bom., 653

rity to appoint a manager of his estate. GIREEJABUTTY KOOERREE v. MONJEE LAL 20 W. R., 477

21. ———— *Act XXXIV of 1858, s. 25—Application by curator bonis appointed in Scotland.* — A petition was presented through his constituted attorney by a *curator bonis* duly

a "Court of Session Extract" of the "act and decree" whereby the said *curator bonis* was appointed; but there was no evidence that *W* had been found of unsound mind and incapable of managing his affairs, or that the curator had given security, or that funds were required for the maintenance of *W*. The Court refused the order. IN RE WELSH

[I. L. R., 8 Bom., 280

22. ———— *Act XXXV of 1858—Guardian for property of lunatic—Lunatic trustee of a mutt.*—A guardian may be appointed under Act XXXV of 1858 to the property vested in a lunatic as the head of a mutt. SITARAMA CHARYA v. KESAVA CHARYA . I. L. R., 21 Mad., 403

23. ———— *Civil Procedure Code, 1882, s. 463—Lunatic defendant—Guardian ad litem—Act XXXV of 1858.*—A guardian *ad litem* cannot be appointed under ch. XXXI of the Code of Civil Procedure for a lunatic defendant to whom Act XXXV of 1858 applies, until the defendant has been adjudged a lunatic under the provisions of the said Act. SUBBAYA v. BUTHAYA

[I. L. R., 6 Mad., 360

24. ———— *Defendant a lunatic, but not adjudicated a lunatic—Code of Civil Procedure (Act XIV of 1882), ss. 443, 463—Act XXXV of 1858—Practice—Appointment of a*

Court of Chancery, the Court should assign a guardian *ad litem* for the defendant if it finds, on inquiry, that he is of unsound mind so as to be unfit to defend the suit. VENKATRAMANA RAMBHAT v. TIMAPPA DEVAPPA . . . I. L. R., 16 Bom., 132

25. ———— *Suit—Act XXXV of 1858 — Lunatic, not adjudged to be so, suing through a next friend or defending through a guardian ad litem.*—The provisions of ch. XXXI of the Code of Civil Procedure are not exhaustive, and where a person is admitted or has been found to be of unsound mind, although he has not been adjudged to be so under Act XXXV of 1858, or by any other

26. ———— *Act XXXV of 1858, s. 22—Application for permission to alienate property of lunatic—Objection by a third party that the property does not belong to the lunatic, determination of, whether necessary.*—In an application for permission to alienate the property of a lunatic under Act XXXV of 1858, it is not necessary to determine whether such property belongs to the lunatic or to a third party. DINESH CHUNDER BANERJEE v. SOUDAMINI DEBI . 4 C. W. N., 523

27. ———— *Act XXXV of 1858, s. 14—Manager appointed under the Lunacy Act — Manager of joint family — Alienation by manager.*—Where a person is appointed manager of a lunatic's estate under Act XXXV of 1858, he can only make a valid alienation in accordance with the provisions of that Act, although he may also be *de facto* manager of the family property. A Hindu married woman having a lunatic husband and and minor sons was appointed guardian of the lunatic's estate under Act XXXV of 1858. She was also *de facto* manager of the family. She mortgaged the family property, without the sanction of the Court as required by s. 14 of the Act. *Held* that the mortgages were

LUNATIC—*continued*

invalid as regards the lunatic's interest in the property, but, as regards the interest of the minors, which was vested in them at the time of the mortgages, the property being ancestral, the mortgages were binding if made for family purposes. ANPURNABAI v. DURGAPA MAHALAPA NAIK

[I. L. R., 20 Bom., 150

28. ———— *Act XXXV of 1858, ss 15, 16, 17, 18, and 20—Hindu lunatic member of joint family—Joint member of the lunatic's family appointed guardian or manager of the lunatic's estate — Liability to account — Manager charged with mismanagement* —The manager of a Hindu lunatic's estate appointed under Act XXXV [illegible]

machinery, nor does it confer any power upon the Court, to deal with the joint family property or interfere in the affairs of a joint family. If [illegible] manager of the lunatic's estate is appointed by the Court under the Act, it is desirable to issue a formal order or certificate of appointment. TRIMBAKLAL GOVANDAS v. HIRALAL ITCHHALAL

[I. L. R., 20 Bom., 659

29. ———— *Act XXXV of 1858—Uncertificated guardian, Powers of—Mana-* [illegible]

[I. L. R., 25 Calc., 585
2 C. W. N., 241

30. ———— *Beng. Act IV of 1870—Sanction to proceedings—Court of Wards.*—The sanction of the Commissioner of the Division is necessary under Bengal Act IV of 1870 [illegible]

[8 B. L. R., Ap., 50

S. C. CHUCKUR SURUN NARAIN SINGH v. COLLECTOR OF SARUN . . . . 17 W. R., 180

LUNATIC—*continued.*

31. ———— *Act XXXV of 1858, s 9—Act XIX of 1873, s. 195—Court of Wards, Power of.*—S. 9 of Act XXXV of 1858 and s. 195 of Act XIX of 1873 do not render it imperative on the Court of Wards to take charge of the estate of a person adjudged by a Civil Court, under Act XXXV of 1858, to be of unsound mind, but merely confer on that Court a power so to do. Until the Court of Wards exercise that power, the appointment by the Civil Court of a manager of the lunatic's property, under s. 9 of Act XXXV of 1858, is valid MANOHAR LAL v GAURI SHANKAR

[I. L. R., 1 All., 476

32. ———— *Act XXXV of 1858, ss. 2, 7, 9, 10, 23—Guardian of lunatic—"The legal heir"—Wife of lunatic—Mahomedan law—Shia sect*—One M. S., a Shia Mahomedan [illegible]

1858, and as such was excluded by the terms of the proviso to that section from being appointed [illegible]

entrusted by the Act. *Held* by KNOX, J, that [illegible]

[I. L. R., 15 All., 29

33. ———— *Act XXXV of 1858*—On an application for the appointment of a [illegible]

specifying of what that estate consists. NITAMBINI CHOWDHRAIN v SHASHI MUKHI CHOWDHRAIN

[4 B. L. R., Ap., 24: 12 W. R., 518

34. ———— *Guardian—Mortgage by de facto guardian*—A Hindu, who is lunatic, may be possessed of property, although he cannot take it by inheritance. All dealings with such property to be binding must be effected by a guardian or manager duly appointed by the supreme civil authority; and since the passing of Act XXXV of 1858, a guardian or manager can only be appointed in the special manner prescribed by that Act. A *de facto* manager can have no greater powers than one

LUNATIC—*continued.*

duly appointed. Where, therefore, the mother of a lunatic, who had not been so appointed, mortgaged his estate without the previous sanction of the Court, the mortgagee's suit for foreclosure was dismissed. COURT OF WARDS *v.* KUPULMUN SING [10 B. L. R., 364: 19 W. R., 164

35. ———— Power of manager—*Person appointed manager of lunatic's affairs while he was of sound mind*.—A person who was appointed manager of a lunatic's affairs, by consent obtained while she was of sound mind, and who is capable of making a defence on her behalf, is competent to represent her in a suit, although not appointed under the law as representative of the lunatic. KALA CHAND GHOSE *v.* SHOOLOCHUNA DOSSIA . 22 W. R., 33

36. ———— *Civil Procedure Code, 1882, s. 463—Right to sue—Suit by next friend of a lunatic—Adjudication of lunacy under Act XXXV of 1858.*—A suit for partition was brought by *A* as next friend of *B*, a lunatic. Subsequent to the institution of the suit, *B* was

Code of Civil Procedure (Act XIV of 1882). The provisions of that chapter apply only in cases where there has been an adjudication of lunacy under Act XXXV of 1858 previously to the institution of the

further that the adjudication of lunacy under Act XXXV of 1858 and *A*'s appointment as manager of the lunatic's estate subsequent to the institution of the suit did not cure the original invalidity of his proceedings in the suit TUKARAM ANANT JOSHI *v.* VITHAL JOSHI . . I. L. R., 13 Bom., 656

37. ———— *Suit by an unadjudged lunatic by the Agent of the Court of Wards as guardian—Authority of the Court of Wards—Mad. Reg. V of 1804—Estates of lunatics*

was the sole surviving member of the testator's family, but it was admitted that she was, and for more than fifty years had been, a lunatic, though

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LUNATIC—*continued.*

of 1858 in cases where the lunacy of a ward is open to question, their failure to do so in the present case was not fatal to the suit; (4) that Civil Procedure Code, s. 464, was accordingly applicable to the case; (5) that the appointment of the Collector as guardian to the plaintiff was legal and valid. In deciding what was the extent of the property which the plaintiff was entitled to inherit under the above rulings, certain documents adduced as evidencing partition of the family property were held to evidence merely arrangements for separate enjoyment. SANKU *v.* PUTTAMMA . . I. L. R., 14 Mad., 289

38.

HIRALAL . . . I. L. R., 23 Bom., 403

39. ———— *Striking out lunatic plaintiff's name—Authority of pleader as agent for filing suit—Limitation Act (XV of 1877), s. 7—Restoration of name—Suit by person not adjudged to be of unsound mind under Act XXXV of 1858—Right of suit—Guardian—Next friend.*—A plaint as originally framed contained the name of *K*, stated to be of unsound mind, as first plaintiff, and of his wife *N* as his guardian and second plaintiff When the plaint was actually filed, *K*'s name was struck out by the pleader and *N*. Subsequently his name was restored on his own application, but the period of limitation prescribed for the suit had then elapsed. The first Court held that under s. 7 of the Limitation Act the plaintiff's claim was not barred. On appeal the Judge dismissed the suit, holding that the order of the first Court restoring *K*'s name was bad, and that the suit was time-barred at the date of that order. On second appeal,—*Held*, reversing the decree, that the pleader and *N* acted beyond their authority in striking out *K*'s name, and that therefore the restora-

MODIA *v.* MODIA DAYALJI JHUMEKRAM [I. L. R., 19 Bom., 135

40. ———— *Act XXXV of 1858, s. 11—Suit on behalf of minor—Collector.*—A Collector appointed under s. 11, Act XXXV of 1858 ... lunatic, cannot ... st appoint ... *v.* COL- ... ARDS *v.*

LUNATIC—*continued.*

RUGHOOBUR DYAL. SHEOPERSHAD NARAIN *v.* COLLECTOR OF MONGHYR . . . . 7 W. R., 5

41. ——— Appeal, Right of—*Act XXXV of 1858, ss. 3, 4, 22—Right of suit to recover property.*—On an application made by the wife

1858 IN THE MATTER OF THE PETITION OF MAHOMED BUSHEERUL HOSSEIN. MUNGHUR *v.* MAHOMED BUSHEERUL HOSSEIN

[I. L. R., 8 Calc, 263: 10 C. L. R., 1

43. ——— *Act XXXV of*

sixteen years in the same house under the same

LUNATIC—*concluded.*

Act in this respect, there ought to be a strong case made out that the change of custody would be for the lunatic's benefit. *Held* also that, as his daughter could not inherit his ancestral property and as it was doubtful if the collaterally-inherited property was the separate property of the lunatic, the Court would not, under such circumstances, appoint a manager of the property, but that the guardians of the lunatic, who were managers of the joint family, should, on her request, furnish

made with a view to a partition of the property, and that the lunatic was declared a lunatic under the Act, whether a partition could be had IN THE MATTER OF THE PETITION OF BHOOPENDRA NARAIN ROY. BHOOPENDRA NARAIN ROY *v.* GREESH NARAIN ROY

[I. L. R., 6 Calc., 539: 8 C. L. R., 30

44. ——— Incapacity of joint owners of property—*Effect of, in favour of managing owners.*—The incapacity of joint owners confers powers of alienation, in certain cases of necessity, upon the managing owner SHEO PERSHAD NARAIN *v.* COLLECTOR OF MONGHYR. GOUREENATH *v* COLLECTOR OF MONGHYR COURT OF WARDS *v* RUGHOOBUR DYAL . . . . . . 7 W. R., 5

45 ——— Insanity pending award—*Person becoming lunatic before award published* —If a person was in fit condition to manage his affairs down to the time when the proceedings before an

LECTOR OF MONGHYR . . . . 7 W. R., 5

46. ——— Power to lease lands of proprietor disqualified from lunacy—*Act XXXV*

be manager. A Civil Court having made an order declaring a talukhdar to be of unsound mind and incapable of managing his affairs, and having at the same time appointed to be manager of his estate

LUNATIC—*continued.*

duly appointed. Where, therefore, the mother of a lunatic, who had not been so appointed, mortgaged his estate without the previous sanction of the Court, the mortgagee's suit for foreclosure was dismissed. COURT OF WARDS *v.* KUPULMUN SING

[10 B. L. R., 364: 19 W. R., 184

35. ——— Power of manager—*Person appointed manager of lunatic's affairs while he was of sound mind.*—A person who was appointed manager of a lunatic's affairs, by consent obtained while she was of sound mind, and who is capable of making a defence on her behalf, is competent to represent her in a suit, although not appointed under the law as representative of the lunatic. KALA CHAND GHOSE *v.* SHOOLOCHUNA DOSSIA . 22 W. R., 33

36. ——— *Civil Procedure Code, 1882, s. 463—Right to sue—Suit by next friend of a lunatic—Adjudication of lunacy under Act XXXV of 1858.*—A suit for partition was brought by *A* as next friend of *B*, a lunatic. Subsequent to the institution of the suit, *B* was

Code of Civil Procedure (Act XIV of 1882). The provisions of that chapter apply only in cases where there has been an adjudication of lunacy under Act XXXV of 1858 previously to the institution of the suit. *Held* also that, independently of the provisions of ch. XXXI of the Code of Civil Procedure, on principles of equity, *A* had no right to sue in respect of the immoveable property of a lunatic. *Held* further that the adjudication of lunacy under Act XXXV of 1858 and *A*'s appointment as manager

37. ——— *Suit by an unadjudged lunatic by the Agent of the Court of Wards as guardian—Authority of the Court of Wards—Mad. Reg. V of 1804—Estates of lunatics*

family, but it was admitted that she was, and for more than fifty years had been, a lunatic, though

of 1858 in cases where the lunacy of a ward is open to question, their failure to do so in the present case was not fatal to the suit; (4) that Civil Procedure

rulings, certain documents adduced as evidencing partition of the family property were held to evidence merely arrangements for separate enjoyment. SANKU *v.* PUTTAMMA . . I. L. R., 14 Mad., 289

38. ——— *Guardian of the person of a lunatic—Suit in respect of the lunatic's estate—Right of suit—Civil Procedure Code (Act*

such a suit. The word "guardian" in s. 440 of the Civil Procedure Code (Act XIV of 1882) as amended by Act VIII of 1890, when applied to a lunatic, means the manager of his estate. Under this section, a person other than the guardian of the estate can also sue with the leave of the Court. BAI DIVALI *v.* HIRALAL . . . I. L. R., 23 Bom., 403

39. ——— *Striking out lunatic plaintiff's name—Authority of pleader as agent for filing suit—Limitation Act (XV of 1877), s. 7—Restoration of name—Suit by person not adjudged to be of unsound mind under Act XXXV of 1858—Right of suit—Guardian—Next friend.*—A plaint as originally framed contained the name of *K*, stated to be of unsound mind, as first plaintiff, and of his wife *N* as his guardian and second plaintiff. When the plaint was actually filed, *K*'s name was struck out by the pleader and *N*. Subsequently his name was restored on his own application, but the period of limitation prescribed for

was time-barred at the date of that order. On

Whether a person of unsound mind, but not adjudged to be so under Act XXXV of 1858, can in this country sue by his next friend. KIRPARAM JHUMEKRAM MODIA *v.* MODIA DAYALJI JHUMEKRAM

[I. L. R., 19 Bom., 135

40. ——— *Act XXXV of 1858, s. 11—Suit on behalf of minor—Collector.*—A Collector appointed under s. 11, Act XXXV of 1858, to take charge of the estate of a lunatic, cannot himself sue on behalf of the lunatic, but must appoint manager for the purpose. GOURBENATH *v.* COLLECTOR OF MONGHYR. COURT OF WARDS *v.*

LUNATIC—*continued.*

RUGHOOBUR DYAL. SHEOPERSHAD NARAIN *v.* COLLECTOR OF MONGHYR . . 7 W. R., 5

41. ——— **Appeal, Right of**—*Act XXXV of 1858, ss. 3, 4, 22—Right of suit to recover property*.—On an application made by the wife and son of *T H*, an alleged lunatic, under the provisions of Act XXXV of 1858, s 3, the daughters of the

T H was of unsound mind, and appointed his wife, *L*, to be the guardian of his person. The daughters

v. Schorn, 24 W R, 124, referred to *Quære*—

—Whether a manager can under any circumstances

43. ——— *Act XXXV of*

LUNATIC—*concluded.*

Act in this respect, there ought to be a strong case made out that the change of custody would be for the lunatic's benefit *Held* also that, as his

guardians of the lunatic, who were managers of the joint family, should, on her request, furnish

made with a view to a partition of the property, and that the lunatic was declared a lunatic under the Act, whether a partition could be had. IN THE MATTER OF THE PETITION OF BHOOPENDRA NARAIN ROY. BHOOPENDRA NARAIN ROY *v.* GREESH NARAIN ROY

[I. L. R., 6 Calc., 539: 8 C. L. R., 30

44. ——— **Incapacity of joint owners of property**—*Effect of, in favour of managing owners.*—The incapacity of joint owners confers powers of alienation, in certain cases of necessity, upon the managing owner. SHEO PERSHAD NARAIN *v.* COLLECTOR OF MONGHYR. GOURFENATH *v* COLLECTOR OF MONGHYR. COURT OF WARDS *v.* RUGHOODUR DYAL . . . . . . 7 W. R., 5

45. ——— **Insanity pending award**—

tially concluded, the award will not be invalidated by reason of the person having become insane before the final publication of the award GOUREENATH *v.* COLLECTOR OF MONGHYR COURT OF WARDS *v.* RUGHOODUR DYAL. SHEO PERSHAD NARAIN *v.* COLLECTOR OF MONGHYR . . . 7 W. R., 5

46. ——— **Power to lease lands of proprietor disqualified from lunacy**—*Act XXXV*

be manager. A Civil Court having made an order declaring a talukhdar to be of unsound mind and

M

MADRAS ABKARI ACT (MADRAS ACT III OF 1864).

See SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF FINE.
[6 Mad., Ap., 40

1. ———— s. 2 — *Liquor — Toddy — Fermented palm juice.*—Sweet palm juice, which by exposure to the operation of natural causes ferments and becomes toddy, is as much manufactured by the person who exposes it as if the same result were produced by the process of distillation ANONYMOUS
[5 Mad., Ap., 26

2. ———— *Toddy—Fermented palm juice—Conviction without evidence of fermentation.—Primâ facie,* toddy is fermented palm juice. A conviction under s 21 of Madras Act III of 1864, for selling toddy without a license, upheld, although no evidence was given as to whether fermentation had taken place. ANONYMOUS 5 Mad , Ap., 36

This case was not intended to define toddy as a matter of law. ANONYMOUS . 6 Mad., Ap., 11

3. ———— *Sale—Barter — Payment of wages in liquor.*—Payment of wages in liquor ... e mean- ... III of ...
[I. L. R., 6 Mad., 141

4. ———— and s. 9 — *Unexecuted contract to sub-rent—uit for specific performance.*—In a suit brought by plaintiff for the specific performance of an agreement entered into between the plaintiff and defendant, whereby the defendant, an ...

under the terms of an unexecuted contract to subrent, although the Act would prevent the subrentor deriving any benefit under an executed contract of sub-renting from the excise or the manufacture or sale of liquor, as defined in s. 2, until he had complied with the condition prescribed in s. 9 of the Act VENKATA KRISTNAIYA *v.* VENKATACHALAIYAR . . . 5 Mad., 1

———— s. 6.

See DAMAGES — SUITS FOR DAMAGES — BREACH OF CONTRACT.
[I. L. R., 14 Mad., 82

———— s. 8 — *Licensed vendor, Sale by* ...

himself had been selling. *M* was duly licensed by the Collector. Under cover of this license, *N* continued his former business, paying *M* a certain sum monthly. *N* was convicted of selling liquor without

MADRAS ABKARI ACT (MADRAS ACT III OF 1864)—*continued.*

a license. *Held* that the conviction was illegal. QUEEN-EMPRESS *v.* NANJAPPA
[I. L. R, 7 Mad., 432

———— s. 10 — *Revenue Recovery Act (Madras Act III of 1864), ss. 1, 3, 4, 5, 37, 42, 52—Sale for arrears of abkari revenue—Prior encumbrance not affected.*—Where land is sold under the provisions of s. 10 of the Madras Abkari Act, 1864, for arrears due by an abkari renter, the purchaser at the sale does not take the land free of all encumbrances as in the case of a sale for arrears of land revenue under the provisions of the Revenue Recovery Act (Madras Act II of 1864). RAMACHANDRA *v.* PITCHAIKANNI . . I. L. R., 7 Mad., 434

1. ———— s. 21—*Licensed vendor—Possession of arrack.*—The Magistrate convicted the accused under s. 21 of Madras Act III of 1864, ...

2. ———— and s. 22—*Licensed vendors where license has expired.*—The provision in s 21 of the Madras Abkari Act limiting the liability of licensed vendors whose license has expired to the case in which they are found in possession of liquor kept for the purpose of sale must be read as an exception to the general provision of s 22 QUEEN *v.* RAMAYYA . . . I. L. R., 5 Mad., 131

1. ———— s. 22—*Conveyance of liquor without valid permits—Permits made out in names of third parties.*—Upon a conviction under s 22 of (Madras) Act III of 1864, for conveying liquor without valid permits, it appearing that the defendants ... the talukh abkari renter, cover- ...

[6 Mad., Ap., 20

2. ———— *Possession of toddy by servants.*—The servants of an abkari renter of certain villages were convicted under s. 22 of Act III of 1864 (Madras) for conveying three measures of toddy without a permit from one of the said villages to the shop of the renter. *Held* that the conviction was illegal. QUEEN *v.* PATTACHI
[I. L. R., 7 Mad., 161

3. ———— and V of 1879, s. 23—*Confiscation of boat used for carrying liquor without permit.*—Neither under the provisions of the Madras Abkari Act nor under the provisions of the Abkari Amendment Act, 1879, is an order by a Magistrate confiscating a boat used for carrying liquor without a valid permit legal. The Collector alone can confiscate. QUEEN *v.* PERIANNAN QUEEN *v.* NARAINA . . . I. L. R., 4 Mad., 341

MADRAS ABKARI ACT (MADRAS ACT III OF 1864)—*concluded.*

——— ss. 23, 29, and s. 17—*Confiscation of animals*—Although a Magistrate may not confiscate animals under s 23 (*a*) of the Madras Abkari Act, yet the proceeds of whatever has been confiscated by the Collector under s. 17, including animals, would be available for distribution in the manner prescribed in s 26 (*b*). QUEEN v. SAKIYA

[I. L. R., 5 Mad., 137

——— s. 25, and V of 1879, s. 26 (b)—*Not producing license*—The offence, under Madras Act III of 1864, s. 25, of not producing, when called upon by the police, a liquor license, is not one for which a Magistrate may proceed under s 26 (*b*) of Madras Act V of 1879. QUEEN v. VASANTAPPA

[I. L. R., 4 Mad, 231

——— s. 26—*Police-officer—Village policeman—Mohatad*—The term "police-officer" used in s. 26 of the Abkari Act (Madras Act III of 1864) includes a mohatad or village policeman. QUEEN-EMPRESS v SESHAYA . I. L. R., 9 Mad., 97

s. 32 of the Act. QUEEN v. CHAKRASAHU

[I. L. R., 7 Mad., 185

MADRAS ABKARI ACT (MADRAS ACT I OF 1886).

——— ss. 9, 11, 55—Under the Madras Abkari Act, 1886, a permit is not necessary where toddy is carried from the licensee's trees to his shop within the limits of his farm, or where, the licensee having a general permit, the persons carrying the toddy are in his employment QUEEN-EMPRESS v SAMBOJI . . I. L. R., 11 Mad., 472

——— s. 28.

See ATTACHMENT—ALIENATION DURING ATTACHMENT I. L. R., 16 Mad., 479

——— ss. 29, 55 (e)—*Rule forbidding delegation by licensee of authority to draw toddy.*

father's permission. He was convicted under s 55 (*e*) of the Act. *Held* that the rule was *ultra vires* and the conviction bad QUEEN EMPRESS v. BELLARA . . . . I. L. R, 11 Mad., 250

——— ss. 31 and 36.

See PRIVATE DEFENCE, RIGHT OF.

[I. L. R., 19 Mad., 349

——— s. 43.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ABKARI ACT.

[I. L. R., 18 Mad., 48

MADRAS ABKARI ACT (MADRAS ACT I OF 1886)—*concluded.*

——— ss. 55 (a), 59—*Rules notified by Government under Abkari Act—Rules for "immediate" removal of toddy*—Toddy-drawers failing to remove their toddy to a shop or distillery "within a reasonable time" after it is drawn are punishable under s. 55 (*a*) of the Abkari Act, though their licenses do not refer to the Government notification made under the Act, prescribing its immediate removal. QUEEN-EMPRESS v. JAMMU

[I. L. R., 12 Mad., 450

1. ——— s. 56—*License to keep toddy-shop—Failure to keep shop open—Omission not constituting an act.*—By s. 56 (*b*) of the Madras Abkari Act, 1886, whoever, being the holder of a license or permit granted under the Act, "does any act in breach of any of the conditions of his license or

QUEEN-EMPRESS v. KARUPPAN

[I. L. R., 23 Mad., 220 note

2. ——— and s. 64—*Holder of a license and his servants.*—The words "being holder of a license" in Abkari Act, s. 56, must be taken to include any person in the employ, or for the time being acting on behalf of the holder of a license. QUEEN-EMPRESS v. MAHALINGAM SERVAI

[I. L. R, 21 Mad., 63

MADRAS ACT—1862—IV.

See GRANT—RESUMPTION OR REVOCATION OF GRANT . I. L. R., 14 Mad., 431

———1863—I.

See CONTEMPT OF COURT—PENAL CODE, s. 174 . . 4 Mad., Ap., 51, 52

——— IV.

See MUNSIF, JURISDICTION OF

[3 Mad., 82
3 Mad., 339
4 Mad., 149

———1864—II.

See LANDLORD AND TENANT—MIRASIDARS.

[I. L. R., 1 Mad., 205

See MADRAS ABKARI ACT, 1864, s 10.

[I. L. R., 7 Mad., 434

See MADRAS REVENUE RECOVERY ACT, 1864.

——— III.

See MADRAS ABKARI ACT, 1864.

MADRAS ACT—*continued.*

———— 1865—III.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ACT III OF 1865.

———— V.

See FINE . . . 3 Mad., Ap., 9

———— VII.

See MADRAS IRRIGATION CESS ACT

———— VIII.

See MADRAS RENT RECOVERY ACT, 1865

See REGISTRATION ACT, 1877, s. 17. [7 Mad., 234

———— X.

See RIGHT OF SUIT—SUITS AGAINST MUNICIPAL OFFICERS . . 3 Mad., 370

———— s. 108 — *Slaughter-house,*

[illegible]

———— s. 114 — *Continuing of offensive trade in premises already used.*—The continuing of offensive trades in premises already used is not an offence under s. 114 of Madras Act X of 1865. The section only applies to the fresh dedication of premises to certain offensive trades. ANONYMOUS [5 Mad., Ap., 16

———— 1866—I.

See CANTONMENTS ACT (MADRAS ACT I OF 1866) . . 7 Mad., Ap., 15 [I. L. R., 8 Mad., 428

See CANTONMENT MAGISTRATE. [I. L. R., 8 Mad., 350

See HIGH COURT, JURISDICTION OF—MADRAS—CRIMINAL . 3 Mad., 277

———— IV.

See RIGHT OF SUIT—OFFICE OR EMOLUMENT . . I. L. R., 8 Mad., 249

———— 1867—VI.

See MADRAS TOWNS LAND REVENUE ACT. [I. L. R., 22 Mad., 100

———— IX.

See MADRAS MUNICIPAL ACT, 1867.

———— 1869—III.

See CONTEMPT OF COURT—PENAL CODE, s. 174 . . . 5 Mad., Ap., 28
[6 Mad., Ap., 44
7 Mad., Ap., 10, 11
I. L. R., 5 Mad., 377
I. L. R., 7 Mad., 197
I. L. R., 12 Mad., 297

See SUMMONS, SERVICE OF. [I. L. R., 11 Mad., 137

MADRAS ACT—*continued.*

———— 1871—III.

See MADRAS TOWNS IMPROVEMENT ACT, 1871.

———— IV.

See MADRAS LOCAL FUNDS ACT, 1871.

———— 1873—III.

See MADRAS CIVIL COURTS ACT, 1873.

———— 1876—I.

See MADRAS LAND REVENUE ASSESSMENT ACT.

———— 1878—V.

See MADRAS MUNICIPAL ACT, 1878.

———— 1879—V.

See MADRAS ABKARI ACT, 1864. [I. L. R., 4 Mad., 231, 241

———— 1882—I.

See SALT, ACTS AND REGULATIONS RELATING TO—MADRAS.

———— V.

See MADRAS FOREST ACT.

———— s. 10.

See VALUATION OF SUIT—APPEALS. [I. L. R., 8 Mad., 22

———— 1884—I.

See MADRAS MUNICIPAL ACT, 1878, ss 103, 105 . I. L. R., 8 Mad., 428

See MADRAS MUNICIPAL ACT, 1884

———— II.

See MADRAS BOUNDARY MARKS AMENDMENT ACT

———— III.

See MADRAS REVENUE RECOVERY AMENDMENT ACT.

———— IV.

See MADRAS DISTRICT MUNICIPALITIES ACT, 1884.

———— V.

See MADRAS LOCAL BOARDS ACT.

———— 1885—I.

See MADRAS POLICE ACT, 1859, s 48. [I. L. R., 9 Mad., 167

———— 1886—I.

See MADRAS ABKARI ACT, 1886.

———— II.

See MADRAS HARBOUR TRUST ACT.

MADRAS ACT—*concluded.*

——1887—I.

See CASES UNDER LANDLORD AND TENANT —BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS.

See MALABAR COMPENSATION FOR TENANTS IMPROVEMENT ACT.

——1888—III.

See MADRAS POLICE ACT, 1888.

——1889—I.

See MADRAS VILLAGE COURTS ACT, 1889.

—— III.

See MADRAS TOWNS NUISANCES ACT.

——1891—I.

See MADRAS *GENERAL CLAUSES ACT.*

——1895—III.

See MADRAS HEREDITARY VILLAGE OFFICES ACT.

——1897—III (MADRAS DISTRICT MUNICIPALITIES AMENDMENT ACT, 1884).

See MADRAS DISTRICT MUNICIPALITIES ACT.

MADRAS BOAT RULES.

1. —— Act IV of 1842—Act IX of 1846—*Jurisdiction of Magistrates—Liability of owner under rule 7—Burden of proof.*—Under Act IX of 1816, the Madras Government is authorized to make in respect of ports in the presidency such regulations for the management of boats and such other matters as are provided for by Act IV of 1842 in respect of the Madras roads, being similar in principle to the provisions of the said Act, but varying in detail as local circumstances may require. Act IV of 1842, s 24, empowers a Justice of the Peace of the town of Madras to hear and determine all pecuniary forfeiture and penalties had or incurred under or against that Act. *Held* that it was competent [illegible]

[illegible]

absence of proof by the prosecutor that the owner was aware of the fact was no bar to his conviction. IN RE ROUTHAKONNI . I. L. R., 9 Mad., 431

2. —— Boat Rules in Madras Ports—*Refusal to carry cargo without reasonable excuse.*—By the Boat Rules of a certain port it was provided (1) that all licensed boats must carry such

MADRAS BOAT RULES—*concluded.*

number of passengers and quantity of goods as should [illegible] he owner [illegible] his boat [illegible] tisfactory [illegible] able to a penalty. *Held* that a refusal by a person in charge of a licensed boat to receive goods on board unless a tallyman was sent with them on the ground that he could not count, was not a reasonable and satisfactory cause QUEEN-EMPRESS *v.* KAMANDU [I. L. R., 10 Mad., 121

MADRAS BOUNDARY MARKS ACT (MADRAS ACT XXVIII OF 1860).

See COURT FEES ACT, SCH. II, ART. 17 [I. L. R., 4 Mad., 204

See LIMITATION ACT, 1877, s. 14 [I. L. R., 11 Mad., 309

—— ss. 21, 25, 28—*Appeal, Nature of—Arbitrator's award—Duty of Collector—Irregularity in procedure.*—The appeal allowed by s. 28 of the Madras Boundary Act, XXVIII of 1860, is one from a decision recorded in the presence of the parties and duly intimated to them as required by s 25 of the said Act. The omission by the Collector to pass a decision in accordance with an arbitrator's award and to furnish a copy to the parties as required by s. 21 of the Boundary Act is fatal to the award. The power given by s 21 being a judicial power, a Collector must exercise his independent judgment, [illegible]

[illegible] I. L. R., [illegible] Mad., [illegible]

—— s. 25.

See LIMITATION—QUESTION OF LIMITATION . I. L. R., 19 Mad., 416

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 11 Mad., 309

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES. [I. L. R., 11 Mad., 309

1. —— *Appeal—Limitation—* [illegible]

2. —— *Limitation—Procedure.*—Under s. 25 of Act XXVIII of 1860 (Madras Boundary Act), which limits the time within which a suit may be brought to set aside the decision of a settlement officer to two months from the date of the award, time will not begin to run until the date on

MADRAS BOUNDARY MARKS ACT (MADRAS ACT XXVIII OF 1860) —concluded.

which the decision is communicated to the parties. As the settlement officer is required to take evidence before coming to a decision under s. 25, a decision based upon the report of a subordinate vitiates the whole proceedings and is not binding on the parties. ANNAMALAI CHETTI v. CLOETE

[I. L. R., 6 Mad., 189

3. ——— **Power of Government to extend time for appeal.**—The proviso contained in s 25 of Act XXVIII of 1860 gives a discretionary power to the Government of extending the time for appeal by suit at all times even after the expiry of the period limited. KRISHNAREDDI GOVINDAREDDI v. STUART I. L. R., 1 Mad, 192

4. ——— A suit by way of appeal against a decision of a Revenue Survey officer in 1876, under s. 25 of the Madras Boundary Act, 1860, was dismissed on second appeal in 1881 by the High Court, on the ground that it was barred by limitation, inasmuch as the suit was instituted one [illegible]

This application was granted, and the plaintiffs brought a second suit against the decision of the Revenue Survey officer *Held* that the order of the Governor in Council was not *ultra vires*, and that the second suit was not barred VENKATRAMANA v. THIR SINGH . . . I. L. R., 7 Mad., 280

MADRAS BOUNDARY MARKS ACT AMENDMENT ACT (MADRAS ACT II OF 1884).

——— s. 9.

See LIMITATION—QUESTION OF LIMITATION . I. L. R., 19 Mad., 416

MADRAS CIVIL COURTS ACT (MADRAS ACT III OF 1873).

See MUNSIF, JURISDICTION OF.

[I. L. R., 9 Mad., 208
I. L. R., 11 Mad., 197

See CASES UNDER VALUATION OF SUIT.

——— s. 12.

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION, ETC.

[I. L. R., 7 Mad., 397
I. L. R., 17 Mad., 309

See MUNSIF, JURISDICTION OF.

[I. L. R., 11 Mad., 140
I. L. R., 19 Mad., 56

——— s. 14.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL.

[I. L. R., 15 Mad., 237

MADRAS CIVIL COURTS ACT (MADRAS ACT III OF 1873)—*concluded.*

——— s. 16—*Suit by reversioner to recover land granted to Hindu widow—Presumption as to death of widow from absence, not a question of succession or inheritance.*—Plaintiff sued as reversioner to recover certain land granted in lieu of maintenance to a Hindu widow. The widow had left her village sixteen years before suit, and had not been heard of since. *Held* that the question whether a presumption arose that the widow was dead was not a question regarding succession or inheritance to be decided according to Hindu law within the meaning of s 16 of the Madras Civil Courts Act, 1873. BALAYYA v. KISTNAPPA . I. L. R., 11 Mad., 448

——— s. 28.

See MUNSIF, JURISDICTION OF.

[I. L. R., 19 Mad., 445

MADRAS DISTRICT MUNICIPALITIES ACT (MADRAS ACT IV OF 1884).

——— s. 11—*Interference with a public drain.*—The owner of a house in a street at Tanjore renewed, without the sanction of the Municipal Council, the masonry covering of a drain in front of his house. *Held* that the act of the plaintiff did not constitute an interference with the drain within the meaning of District Municipalities Act, s. 211. MUNICIPAL COUNCIL, TANJORE v. VISVANATHA RAU

[I. L. R., 21 Mad., 4

——— s. 41.

See PUBLIC SERVANT.

[I. L. R., 13 Mad., 131

——— s. 47 and s. 63—*Land tax—Land unappropriated to buildings.*—A municipal council [illegible]

[I. L. R., 18 Mad., [illegible]

——— ss. 49, 50.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MUNICIPAL TAX.

[I. L. R, 13 Mad., 78

1. ——— s. 53 and ss. 55 and 60—*Wrongful assessment of profession tax.*—The Municipality at Tuticorin demanded R50 as profession tax from the South Indian Railway Company, which had already paid profession tax to the Municipality at Negapatam. The Company complied with the [illegible]

RAILWAY CO. . . I. L. R., 13 Mad., [illegible]

MADRAS DISTRICT MUNICIPALITIES ACT (MADRAS ACT IV OF 1884) —*continued.*

2. ——— and ss. 55 and 60—*Profes-*

cipal Council of Tellicherry v. Bank of Madras . . . I. L. R., 15 Mad., 153

3 ——— and ss. 59 and 60—*Profession tax—Trader*—One who makes it his business to sell the produce of his own land for profit is a trader within the meaning of Madras Act IV of 1884, provided the sales are conducted in a shop or place of business. *Held* by Parker, J., that one who has paid profession tax as a sheristadar in one municipality is not on that account exempted from paying a further tax in respect of a trade carried on by him in another municipality under Madras Act IV of 1884 Venkata Reddi v. Taylor

[I. L. R., 17 Mad., 100

4. ——— and sch. (A)—*Profession.*

of a sum levied on him for profession tax under the District Municipalities Act for the reasons that he practised as a District Court pleader, and that the District Court was situated outside the municipal limits *Held* that the plaintiff was liable to pay profession tax to the Municipality of Salem Ramasami Ayyar v. Municipal Council of Salem . . . . I. L. R., 18 Mad., 183

5. ——— *Profession tax—English*

premises of the agents. The Municipal Council of

Municipal Council, Cocanada v. Royal Insurance Co. . . . I. L. R., 21 Mad., 5

——— s. 55—*Profession tax—Officer with head-quarters in municipality.*—An officer, whose head-quarters are within a municipality, does not *ipso facto* exercise his profession or hold such office or appointment within the municipality so as to render himself liable for the payment of profession tax under Madras Act IV of 1884. Accordingly, an officer who is not personally present at his head-quarters in the course of duty for a period of sixty days in the half-year is not liable for the tax under s. 55 of the Act. Chairman, Ongole Municipality v. Mounsey . . I. L. R., 17 Mad., 453

See Hammick v. President, Madras Municipal Commission . . I. L. R., 22 Mad., 145

——— ss 63, 262—*House-tax assessed on school building—Suit to recover tax payable under*

——— ss. 71 (2), 262 (2)—*Notice of intended insertion of name or property on assessment books—Substantial compliance with Act—Action to recover money paid in respect of tax*—By s 71 of the Madras District Municipalities Act, 1884, the Chairman may at any time amend the assessment book in manner therein provided, but no person's name or property shall be inserted, nor any increase of assessment made unless notice thereof has been served on such person not less than thirty days previous to a day to be specified in such notice as the day upon which such notice will be revised. By

purported to be issued under s. 71 (2) of the Madras District Municipalities Act, 1884, and was as follows: "I have the honour to forward herewith a list showing the amount of land and water-taxes due for 1895-96 on devastanam lands within the limits of this municipality, and to request that you will be good enough to cause the amount to be remitted to this office at your earliest convenience." *Held* that the notice was bad, that the terms of s. 71 (2) had not been substantially complied with, and that consequently

1. ——— s. 103—*Procedure to compel payment of tax—Distress.*—Under s. 103 of Act IV of 1884 (Madras), a prosecution for default of payment of tax cannot be instituted unless the tax cannot be recovered by distress and sale of moveable property of the defaulter as provided in that section. Queen-Empress v. O'Shaughnessy . I. L. R., 9 Mad., 429

MADRAS DISTRICT MUNICIPALITIES ACT (MADRAS ACT IV OF 1884) —*continued.*

2. ——— *Attachment of moveable property—Doors of house.*—The doors of a house are not attachable as moveable property under the Madras District Municipalities Act, s. 103. QUEEN-EMPRESS *v.* IBRAHIM . I. L. R., 13 Mad., 518

3. ——— and s. 110—*Doors of house—Distraint notice.*—A Municipal Council under the District Municipalities Act has, under s. 110, a power to distrain after due notice, besides that given by s. 103, but the property distrained must be that of the defaulter, and the doors of a house cannot be removed in execution of a warrant of distress. PURUSHOTTAMA *v.* MUNICIPAL COUNCIL OF BELLARY . . I. L. R., 14 Mad., 467

——— s. 169—*Suit for declaration of title against a Municipality.*—The plaintiff sued a Municipal Council, under the Madras District Municipalities Act, for a declaration of title to a certain structure situated in the limits of the Municipality and of his right to put a roof over it. The structure was found to belong to the plaintiff *Held* that the Municipal Council had no discretion under s 169 of the above Act to prevent the plaintiff from dealing with the structure, provided he did not interfere with the convenience of the public or with any sanitary regulations KRISHNAYYA *v* BELLARY MUNICIPAL COUNCIL . . . . I. L. R., 15 Mad., 292

——— s. 173—*Obstruction of public street.*—S. 173 of the District Municipalities Act, 1884 (Madras), provides that no person shall deposit anything so as to cause obstruction to the public in any street without the written permission of the Municipal Council. *Held* that the depositing by any person of an article in the street without the permission of the Municipal Council amounted to an obstruction. QUEEN-EMPRESS *v.* BOLAPPA [I. L. R., 11 Mad., 343

——— s 179—*Repair of buildings.*—By s. 179, Madras District Municipalities Act IV of 1884, it is provided that "the external roofs, verandahs, pandals, and walls of buildings erected or renewed after the coming into operation of this Act shall not be made of grass, leaves, mats, or other such inflammable materials except with the written permission of the Municipal Council." *Held* that the word "renewed" includes repairing. QUEEN-EMPRESS *v.* SUBBANNA . I. L. R., 19 Mad., 241

——— s. 180 and s. 264—*Municipal building license—Building in excess of license—Requisition to demolish building—Magistrate, Jurisdiction of.*—A landowner in a Municipality subject to Madras Act IV of 1884 applied for a building license under s. 180 of the Act. The Municipality, hav-

was provided that the deposit made by the ...

the portion of the land which had not been licensed. This notice was not complied with. The landowner was then prosecuted and convicted under ss. 180, 263, and 264 of the Act. *Held* that neither of the above-mentioned orders of the Municipal Council were legal, and consequently that no offence had been committed by the landowner. *Semble*—Madras Act IV of 1884, s. 264, does not empower a Magistrate to impose a fine prospectively in respect of the period during which a person convicted of the offence of omitting to comply with a notice to execute any work may continue to leave such work unexecuted. QUEEN-EMPRESS *v.* VEERAMMAL [I. L. R., 16 Mad., 230

——— ss. 188, 189—*Keeping a private* ...

broker and permitted the carts to stand on his premises until the sale and removal of the goods was completed *Held* that the place was used as a cart-stand within the meaning of s. 188, and that the accused had committed an offence punishable under s 189 of the Act. QUEEN-EMPRESS *v* AYYAKANNU MUDALI . . . I. L. R., 22 Mad., 455

——— *Keeping a private cart-stand without a license.*—It is not necessary, in order to ...

MUDALI . . . I. L. R., 21 Mad., ...

——— s. 198 and ss. 191, 192, 193—*Butchers' licenses—Private market, Meaning of.* ...

... remove to a fixed market. *Held* that butchers' shops are not "private markets" within the meaning of the Act, and that the action of the Municipal Council was *ultra vires.* QUEEN-EMPRESS *v.* BAODUR BHAI . I. L. R., 10 Mad., 216

——— s. 222—*Nuisance—Sewage water.*—An occupier of a building who allows sewage water to run into a street within the limits of a Municipality, governed by the Madras District Municipalities Act, commits an offence under s. 222 of that Act, although the Municipality may have supplied no side drains in the street in question. QUEEN-EMPRESS *v.* SEVUDAPPAYYAR [I. L. R., 15 Mad., 91

MADRAS DISTRICT MUNICIPALITIES ACT (MADRAS ACT IV OF 1884)—*continued.*

should be forfeited on any default made by him in carrying out the terms of the contract. One holding a decree against the contractor attached the amount of the deposit in the hands of the Municipal Council, but the Council subsequently passed

was not barred by the rule of limitation in the Madras District Municipalities Act, s 261, (2) that the provision for forfeiture in the contract was penal and unenforceable, and consequently that the resolution of July 1858 was *ultra vires* SRINIVASA v. RATHNASABAPATHI . I. L R, 16 Mad., 474

——— s. 262—*Suit to recover tax alleged to be illegally levied—Right of suit*—The plaintiff built a house at Nell re, the construction of which was completed on the 15th of August 1893. The Municipal authorities of that place, being governed by the Madras District Municipalities Act, gave notice of assessment on the 11th of September, levied the tax as assessed, and credited it as the tax due for the half-year ending on the 30th of September 1893 The plaintiff now sued to recover the

——— ss. 263, 264—*Criminal Procedure Code (Act X of 1882), ss 16, 350—Bench of Magis-*

the absence of the other two. It appeared that

Magistrates before whom it had begun. *Quære*—Whether a charge under s. 264 would lie in the absence of a resolution passed by the Municipal Council KARUPPANA NADAN v. CHAIRMAN, MADURA MUNICIPALITY . I. L. R., 21 Mad., 246

——— Bye-law No. 48—*District Municipalities Act Amendment Act (Madras Act III of 1897)—Covering a drain without Municipal permission*—A bye-law of a Municipality had been framed under the powers conferred by an Act of 1884 as amended by an Act of 1897, and was to the following effect. "No public drain shall be covered without the permission of the Municipal Council." It had come into force in 1890. Prior to its coming into operation, an earlier bye-law had subsisted, in substantially the same terms. An occupier of premises, who had covered a drain during

MADRAS DISTRICT MUNICIPALITIES ACT (MADRAS ACT IV OF 1884)—*concluded.*

the subsistence of the earlier bye-law, was charged with having committed an offence under the later bye-law, and contended by way of defence that he could not be convicted, inasmuch as the act complained of had been committed before the passing of the Act under which the complaint was laid. He was convicted by a Bench of Magistrates. *Held* that the conviction was right. *Per* ARNOLD WHITE, C J.—The bye-law applies to all drains which existed in a covered state at the time when it came into operation. The word "shall" is used throughout the bye-laws in the imperative, and not with reference to time, and this is the sense in which it is used in the bye-law in question *Per* BENSON, J.—A bye-law similar in terms to that under which the accused had been convicted having been in

MADRAS FOREST ACT (MADRAS ACT V OF 1882).

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE [I. L. R., 19 Mad., 165

——— s. 2 and ss 3, 4, 6, 8, 9, 50—*Destroying cairn erected by Forest Department.*—The accused, who were servants of the shrotriemdar of an agraharam, destroyed a cairn erected by the Forest Department on the shrotriem land along the boundary line of a proposed forest reserve. No notice under Forest Act, s. 6, was proved to have been served on the shrotriemdar, and it did not appear whether the land in question was comprised in the boundaries specified in the notification published under s. 4. The accused were convicted under s. 50

EMPRESS v. JANGAM REDDI [I. L. R., 14 Mad., 247

——— ss. 2, 43—*Rules 10, 13, 23—Logs permanently fastened to a building cease to be timber.*—The accused were convicted of removing "timber" vested in the Forest Department, and the convicting Magistrate ordered it to be confiscated.

MADRAS FOREST ACT (MADRAS ACT V OF 1882)—*continued.*

———— **s. 4 and ss. 2, 10, and 14**—*Claim to percentage of forest income—Pensions Act (XXIII of 1871), s. 4—"Civil Court"—Jurisdiction of Forest Settlement Officer—Jurisdiction of Appellate Court—Consent of parties to jurisdiction.*—A claim to a percentage of forest income is not a

barred by s. 4 of the Pensions Act. A Forest Settlement Officer is a "Civil Court" for the purposes of the Pensions Act. If a Court of limited jurisdiction exceeds its powers and adjudicates on a claim over which it has no jurisdiction, the Court

cannot give a Forest Settlement Officer jurisdiction in a case where he has no inherent jurisdiction. SECRETARY OF STATE FOR INDIA *v.* VYDIA PILLAI

[I. L. R., 17 Mad., 193

———— **s. 6.**

See TITLE—EVIDENCE AND PROOF OF TITLE—LONG POSSESSION.
[I. L. R., 15 Mad., 315

———— *Tree pottah—Occupier of land.*

———— **s. 10.**

See APPEAL—MADRAS ACTS.
[I. L. R., 11 Mad., 309

See JURISDICTION OF CIVIL COURT—STATUTORY POWERS, PERSONS WITH.
[I. L. R., 12 Mad., 105

See VALUATION OF SUIT—APPEALS.
[I. L. R., 8 Mad., 22

———— **ss. 10 and 11**—*Claim by riparian owner to uninterrupted flow of natural stream—Jurisdiction of Forest Settlement Officer.*—A Forest Settlement Officer appointed under s. 4 of the

TAMBIAR *v.* SUNDARAM AYYAR
[I. L. R., 20 Mad., 279

———— **s. 14 and s. 39**—*Limitation Act (XV of 1877), ss. 5, 6—Period of Limitation—Power to excuse delay.*—Delay in preferring an appeal under the Madras Forest Act beyond the period prescribed by s. 14 of that Act may be excused under s. 5 of the Indian Limitation Act, 1877. REFERENCE UNDER MADRAS FOREST ACT
[I. L. R., 10 Mad., 210

MADRAS FOREST ACT (MADRAS ACT V OF 1882)—*concluded.*

1. ———— **s. 21**—*Tree pottah—Trespass.*—The holder of pottah of certain trees on land which had been declared a reserved forest was convicted of trespass under the Madras Forest Act on proof that he continued to gather the produce of the trees. *Held* that the conviction was bad for want of proof that the petitioner's claim had been duly disposed of or that he had not preferred his claim within the period required by law. QUEEN-EMPRESS *v.* RAMI REDDI . . . . I. L. R., 12 Mad., 226

2. ———— **and ss. 4, 7, 10**—*Making fresh clearing, Offence of—Omission of order prohibiting felling of trees pending re-*

Department prohibiting him from ... pending the rehearing. *Held* that the acquittal was wrong. QUEEN-EMPRESS *v.* NARASIMMAYYA
[I. L. R., 12 Mad., 338

3. ———— *Grazing cattle in a forest reserve.*—The owner of cattle found grazing in a forest reserve cannot be convicted under Madras Forest Act, s. 21 (*d*), in the absence of evidence that he either pastured the cattle or permitted them to trespass in the reserve. QUEEN-EMPRESS *v.* KRISHNAYYAN . . . . I. L. R., 15 Mad., 156

———— **Rule 12 of rules under Forest Act**—*Removal of leaves from classified trees.*—The mere removal of leaves from classified trees on unreserved land does not constitute a breach of rule 12 of the Madras Forest Act, 1882. QUEEN-EMPRESS *v.* SIVANNA . I. L. R., 11 Mad., 139

SHREEGAR . . . I. L. R., 13 Mad., –

———— **s. 33**—*"Jointly interested"—*

MADRAS GENERAL CLAUSES ACT (MADRAS ACT I OF 1891).

See MADRAS RENT RECOVERY ACT, s. 51

[I. L. R., 22 Mad., 179

MADRAS HARBOUR TRUST ACT (MADRAS ACT II OF 1886).

See BILL OF LADING.

[I. L. R., 19 Mad., 169

———— ss. 70, 87—*Immunity from action—Breach of contract—Contract Act (IX of 1872), ss. 151, 152—Liability of bailees for hire for loss of goods—Negligence—Onus of proof—Byelaws, Validity of.*—When goods which have been entrus-

bonâ fide done or ordered to be done by them in pursuance of the Act, does not apply to all causes of action, and, *inter alia*, to a suit in respect of a breach

entering into a contract, and the section does not apply in a case where the party aggrieved complains of the breach of such a contract on the part of the Board By s 70 of the Madras Harbour Trust Act, 1886, the Board is empowered to make bye-laws for the reception, removal, and porterage of goods. A bye-law framed under this section provided that importers desiring to store cargo must apply to the Secretary of the Board for such space as they might require, and that such applications would be granted on such terms as the Board might approve, and concluded with the reservation that the Board, while taking all reasonable precautions, would accept no responsibility in respect of property stored upon its premises, which would remain at the risk of the consignees or owners. *Held* (*per* COLLINS, *C.J.*, and BODDAM, *J.*) that this provision was not a bye-law for the reception or removal of goods within the meaning of s 70 of the Act, and was *ultra vires*. TRUSTEES OF THE HARBOUR, MADRAS *v.* BEST & CO.

[I. L. R., 22 Mad., 524

———— s. 87 and s. 61—*Maintenance of harbour causing encroachments on seashore—Liability of a public body for maintaining works authorized by statute—Common law liability where not expressly excluded by statute—Limitation.*—A harbour, which was in the first instance constructed by Government, was, by the Madras Harbour Trust Act, 1886, vested in trustees, together with the foreshore within the limits of the port. Prior to the date of the Act, an erosion, by the action of the sea, of a

MADRAS HARBOUR TRUST ACT (MADRAS ACT II OF 1886)—*continued.*

portion of the foreshore had commenced, in conse-

result of the continuous encroachment of the sea was that a part of the said revetment or barrier of stones and some land was washed away. Plaintiff was the

the payment of compensation by the trustees. By s 61, the trustees are empowered to perform all

damage to the plaintiff's buildings was alleged to have occurred were 25th December 1897 and 9th and 10th April 1898 respectively. By s. 87 of the Madras Harbour Trust Act, no suit shall be commenced against any person under the Act after six months

presented, the Court was closed. By the same section it is provided that no suit or other

should not be paid on or before the expiry of one month from the date thereof, legal proceedings would be instituted to recover the damage without further notice. The second letter, dated 11th May 1898,

the ground of complaint to be that the encroachment of the sea was the result of the harbour groynes by which the action of the sea had been affected, that defendants had acted illegally and negligently in maintaining and extending those groynes and so causing the encroachment, and that by so doing they had caused the foreshore vested in them to be washed

MADRAS HARBOUR TRUST ACT (MADRAS ACT II OF 1886)—*concluded.*

away and the sea to be let in to the plaintiff's premises, thus causing the damage complained of, which defendants had taken no steps to prevent. *Held per* SHEPHARD, J., that the plaintiff must be deemed to have commenced the suit in due time, since it was owing to the act of the Court itself that he was prevented from presenting his plaint till the day upon which it was filed. Also that the notice was sufficient, and that on the facts of the case s. 87 had no application. *Semble*—That, though a special rule of limitation was prescribed by the Act,

absence of any statutory duty cast upon them to insure plaintiff from loss, was confined to the maintenance of the particular work they took over, and, if there was any general obligation to protect the plaintiff's property, it lay on the Government, who constructed the harbour, the Legislature not having imposed it on the trustees. ISMAIL SAIT *v.* TRUSTEES OF THE HARBOUR, MADRAS [I. L. R., 23 Mad., 389

MADRAS HEREDITARY VILLAGE OFFICES ACT (MADRAS ACT III OF 1895).

———— s. 5—*Attachment of growing crop.*—By s 5 of the Madras Hereditary Village Offices Act, the emoluments of village offices are not to be liable to attachment. *Held* that an attachment by a decree-holder of a crop growing on certain lands in a zamindari, which were the inam service lands held by the judgment-debtor as a village servant, had been rightly set aside. KANNAM NAIDU *v.* LATCHANNA DHORA I. L. R., 23 Mad., 492

———— s. 21.

See MADRAS REVENUE RECOVERY ACT, s. 52. I. L. R., 23 Mad., 571

MADRAS IRRIGATION CESS ACT (MADRAS ACT VII OF 1865).

See MADRAS RENT RECOVERY ACT, s. 4. [I. L. R., 7 Mad., 182

1. ———— s. 1—*Water-cess—Overflow from Government works—Water supplied or used for purposes of irrigation.*—Surplus water from Government irrigation works flowed on to land of the plaintiff which they were in the habit of cultivating with dry crops and stagnated there rendering such cultivation impossible. The plaintiffs did not want the

MADRAS IRRIGATION CESS ACT (MADRAS ACT VII OF 1865)—*concluded.*

water to flow on to their land, but, being unable to

2. ———— *Lands irrigated under Kistna anicut—Water-cess—Optional or compulsory use of water.*—A raiyat occupying land in the Kistna delta made no application for the supply of water, but water from the irrigation channels flowed

katappayya v *Collector of Kistna, I. L. R., 12 Mad., 407,* followed. KRISHNAYYA *v.* SECRETARY OF STATE FOR INDIA . I. L. R., 19 Mad., 24

———— s. 4.

See MADRAS RENT RECOVERY ACT, s. 11 [I. L. R., 15 Mad., 47

MADRAS LAND REVENUE ASSESSMENT ACT (MADRAS ACT I OF 1876).

parties in applying.—A suit was brought by a

registration and assessment of a village in the ...

and has been in your possession ... terms of the documents executed by them to you

MADRAS LAND REVENUE ASSESSMENT ACT (MADRAS ACT I OF 1876) *—continued.*

therefor on the 13th December 1872 and on the 14th May 1877, and whereas I have received from you R2,000 as the consideration for my ratifying your rights in accordance with the terms of the said documents and for relinquishing whatever rights I

registration of the village in the name of *F* on the 25th March 1883 On the 29th March 1883 *F* also made a similar application, but, pending disposal, the present zamindar's father died, and was succeeded by his son, the present zamindar, who raised objections, and the application was not granted. On the 23rd May 1887 the present zamindar granted a lease of the zamindari to *O*, *S*, and *K*, who executed a release guaranteeing *F* undisturbed possession and en-

which, after reciting the grant from the Rani, the deed executed by the zamindar's deceased father dated the 22nd February 1883, and a further payment of R3,500 by *F*, contained the following covenant: "Therefore I forfeit and relinquish the right I profess to have in me to question the said permanent lease or the terms of the said lease deeds, and I hereby ratify your right You and your heirs shall hold and enjoy the said villages absolutely according to the terms of the aforesaid permanent lease deeds." *F* then applied by petition, dated the

the Government of Madras on the 14th November 1891 cancelled both the separate registration and the separate assessment. Under the circumstances, *F*, claiming to be the duly registered holder of the said village, sued the Secretary of State for a declaration that

whether his village was separately registered and assessed or not. *Held* that the suit by *F* for a declaration that the order of the Madras Govern-

ing a prayer for consequential relief, then the suit was bad for misjoinder, inasmuch as the zamindar and the lessees who were interested parties were not joined *Held* also that not only the person applying under Act I of 1876, s. 2, for separate assessment and registration must be entitled thereto, but also that the parties to the alienation must concur in the application. FISCHER *v* SECRETARY OF STATE FOR INDIA IN COUNCIL. ORR *v*. FISCHER

[I. L. R., 19 Mad., 292

Held by the Privy Council, reversing the above

nue, and power is reserved to the Governor in

MADRAS LAND REVENUE ASSESSMENT ACT (MADRAS ACT I OF 1876) —*concluded.*

discharged by direct payment by him to the Collector. FISCHER v. SECRETARY OF STATE FOR INDIA. ORR v FISCHER . . I. L. R., 22 Mad., 270 [L. R., 26 I. A., 16 3 C. W. N., 161

2. ———— ss. 2 and 6—*Suit for declaration of right to separate registration and assessment—Madras Regulation XXV of 1802, s. 8—Want of concurrence of parties in suit.*—An alienee of a portion of a zamindari is entitled to separate registration and assessment under Madras Act I of 1876. A Court has power to order separate registration and assessment under s. 6, although all the parties concerned do not concur in applying within the meaning of s. 2. KAMALAMMAL v. RAJU NAICKER [I. L. R., 19 Mad., 308

———— s. 6—*Madras Regulation XXV of*

MADRAS LOCAL BOARDS ACT (MADRAS ACT V OF 1884).

1. ———— s. 27 and ss. 128, 156—*Suit against Talukh Board—Suit framed erroneously—Plaint, Frame of—Compensation for wrongful acts*

2. ———— and s. 156—*Notice of action—Form of suit—Plaint, Frame of—Injunc-*

situated, for an injunction restraining the defendants from interfering with the wall. No notice of action was given under the Local Boards Act, s. 156. In

MADRAS LOCAL BOARDS ACT (MADRAS ACT V OF 1884)—*continued.*

the Courts of first instance and first appeal no objection was taken to the frame of the suit with reference to the provisions of s. 27. *Held* (1) that the defendants should not be permitted on second appeal to raise such objection to the frame of the suit; (2) that previous notice of action under s. 156 was not necessary. PRESIDENT, TALUKH BOARD, SIVAGANGA v. NARAYANAN [I. L. R., 16 Mad., 317

———— s. 43—*Public servant—Sanitary Inspector.*—A Sanitary Inspector appointed by the Local Board is a public servant within the meaning of Local Boards Act, Madras, 1884, s. 43. QUEEN-EMPRESS v. TIRUVENGADA MUDALI [I. L. R., 21 Mad., 428

———— ss. 64, 73—*Tax payable on land—Favourable tenure—Claim by landholder of more than one-half of the tax from tenant—Invalidity of custom for tenant to pay whole tax.*—A tenant paid an annual rent of R64 to the landholder, the tenure

was found that under a custom subsisting in the

whether the rent, as fixed at the time when the ... was granted, was favourable or unfavourable. BHUPATIRAZU v. RAMASAMI . I. L. R., 23 Mad., 268

———— ss. 77, 78, 81, 94, 163—*Penal Code (Act XLV of 1860), ss. 99, 184, 353—Service of notice of demand of house-tax—Omission to fill up the house-register completely—Illegal distraint—Resistance to distraining officer.*—A notice of de-

had been sufficiently complied with as regards the preliminary steps for making the demand and the service of notice, and the fact that the spade and the bucket were protected from attachment under s. 94 did not justify the resistance, and accordingly that the defaulter was guilty of offences under Penal Code, ss. 186 and 353. QUEEN-EMPRESS v. POOMALAI UDAYAN . I. L. R., 21 Mad., 296

———— s 87, cl. 3—*Government stores and equipages—Non liability to tolls.*—Stores and carts belonging to the Government jails come within the

MADRAS LOCAL BOARDS ACT (MADRAS ACT V OF 1884)—*concluded.*

words "Government stores and equipages" in cl. 3, s. 87, Act V of 1884, and are free from tolls under that Act. QUEEN-EMPRESS *v.* KUTTI ALI
[I. L. R., 20 Mad., 16

—— ss 98 and 100.

See PENAL CODE, s. 188.
[I. L. R., 20 Mad., 1

———— s 128 and s 156—*Suit for malicious prosecution against officers of Panchayat Union—Limitation.*—A suit was brought against the Chairman and accountant of a Punchayat Union for damages for malicious prosecution more than six months after the close of the criminal proceedings, and it was contended for the defendants that the suit should have (under s. 128 of the Local Boards Act) been brought against the Talukh Board, and that the suit was not instituted within six months of the accrual of the cause of action as required by s 156 of the same Act. *Held* (1) that the defendants were liable for torts committed by them, and that, notwithstanding the Local Boards Act, s 128, the plaintiff was not confined to his remedy against the Talukh Board, (2) that the Local Boards Act, s. 156, was not applicable unless it were proved that the Act complained of was done by servants of the Talukh Board within the scope of their authority as such, acting or purporting to act under the Act ANNAJI *v.* SUBRAMANYA . . I. L. R, 13 Mad., 442

MADRAS LOCAL FUNDS ACT (MADRAS ACT IV OF 1871).

———— Tolls where leviable.—Under the

LAKSHUMAN . . . I. L. R., 6 Mad., 37

MADRAS MUNICIPAL ACT (MADRAS ACT IX OF 1867).

Disc
the
hold .
exercise of that discretion does not render him liable to an action MOONEE UMMAH *v.* MUNICIPAL COMMISSIONERS FOR TOWN OF MADRAS . 8 Mad., 151

MADRAS MUNICIPAL ACT (MADRAS ACT V OF 1878).

———— ss. 103, 105, sch. A, class I—*Madras Act I of 1884, sch. A, class I—Professional tax—Half-yearly payments.*—Although the

MADRAS MUNICIPAL ACT (MADRAS ACT V OF 1878)—*continued.*

under class I, sch. A of Act V of 1878, Madras, to profession tax at the yearly rate of R150, paid a moiety thereof for the first half of the year 1884 as provided in s 105 of the said Act. When the tax for the second half-year became due, Madras Act I of 1884 had come into force, and *W* was assessed for the second half of the year under class I of sch. A of that Act at R125, being a moiety of the yearly tax on the same class. *Held* that the assessment was legal. WILSON *v.* PRESIDENT, MUNICIPAL COMMISSION, MADRAS . . I. L. R., 8 Mad., 429

1. ———— s. 119—*Place of public worship—Feeding Brahmins*—A building used in whole or
wor-
the
ding
within
ETTI

SUBBAYA CHETTI *v.* ARUNDEL
[I. L. R., 6 Mad., 287

2. ———— and ss 120, 123—*Waste*

(not exceeding R4 per ground) on lands unappropriated to any building, or occupied by native huts with their appurtenances. AHMED UNNISSA BEGAM SAHIBA *v.* ARUNDEL . . I. L. R., 7 Mad., 63

———— s. 123—*Tax on buildings—Hospital built by Government—Standard of hypothetical rent*—Under s 123 of the City of Madras Municipal Act, the gross annual rent at which a building

the Municipality as on a rental of R1,000 a month,

MADRAS MUNICIPAL ACT (MADRAS ACT V OF 1878)—*continued.*

——— s. 192, Case referred under—*Right of Municipal Commissioners to levy water-tax—Condition precedent—Independent power—Construction of statutes*—The Madras Municipal Act is not a "private" Act. When a public body is

city in which no water had been introduced by the Municipal Commissioners The Commissioners levied a water-tax on *B* in respect of his premises. *B*

water-tax was independent of the duty imposed upon the Commissioners to supply water. BRANSON *v.* MUNICIPAL COMMISSIONERS, MADRAS [I. L. R., 2 Mad., 362

——— ss. 317, 318—*President of Municipal*

cleansing and filling up tanks and wells and draining off stagnant water likely to prove injurious to the

by the Act against the President's decision. *Held,* in a suit by the Municipal Commissioners to recover

PARTHASARADI . . I. L. R., 11 Mad., 341

——— s. 433—*Water rate—Liability of*

payer has a remedy by action and may recover

MADRAS MUNICIPAL ACT (MADRAS ACT V OF 1878)—*concluded.*

compensation, either under the provisions of s. 433 (which provides that a person aggrieved by the failure of the Commissioners to do their duty may bring his action, and the Court may either direct the duty to be performed "or make such order as to the Court may seem fit") or under those of the Statute of Westminster. *Semble*—If the Court does not order the execution of the works under s. 433, the only other order it could make would be an order for reasonable compensation. The Legislature intended the water rate to be a payment for a benefit conferred, and the tax should not be levied till water can be supplied. If in part of the city the Commissioners are able to supply water and desire to obtain at once a return for their works, they should apply to the Government to exempt the rest of the city from the operation of the Act. MUNICIPAL COMMISSIONERS, MADRAS *v.* BRANSON . . . I. L. R., 3 Mad., 201

MADRAS MUNICIPAL ACT (MADRAS ACT I OF 1884).

1. ——— s. 103 and s. 110—*Profession tax—Liability of member of a firm to pay separate*

under the Act.—A member of a firm of Attorneys-at-Law and Notaries Public, which paid the profession

2. ——— and s. 190—*Profession* ... *of Police.*—The Inspector- ... with ... tour, ... Gene- ... the ... tax ... spect ... , 145

See CHAIRMAN, ONGOLE MUNICIPALITY [I. L. R., 17 Mad., 453

3. ——— and ss. 190, 192—*Profes- ... Extent ... of ... —A ... which ... muni- ... arts,*

MADRAS MUNICIPAL ACT (MADRAS ACT I OF 1884)—*continued.*

Magistrates had jurisdiction under Madras Municipal Act s 193, to decide the question of the liability of the appellant to be taxed under s. 103; (2) that although the absent partner might be called upon through the appellant as his agent to pay the tax due by the firm with reference to its whole income, he was not otherwise chargeable with any tax in respect of the business carried on by him. DAVIES *v.* PRESIDENT OF THE MADRAS MUNICIPAL COMMISSION . . I. L. R., 14 Mad., 140

4. ——— and sch. A, class 1 (A),

subscriptions of its members for pensions for their widows and children is a benefit society within the meaning of sch. A, class 1 (A), of the said Act

——— s. 307—*Prohibition against depositing stable refuse in a street—Deposit of stable*

was charged before a Magistrate and fined under

MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS . . . I. L. R., 23 Mad., 164

1. ——— s. 433—*Statement of cause of*

MADRAS MUNICIPAL ACT (MADRAS ACT I OF 1884)—*concluded.*

2. ——— *Notice of action.*—In a suit

——— sch. A—*Liability of Mutual Assurance Company to taxation.*—The investment for

——— sch. B—*Vehicle tax—Bicycle—Vehi-*

MADRAS POLICE ACT (MADRAS ACT XXIV OF 1859).

——— ss. 10 and 44—*Departmental punishment and prosecution under the Act.*—In the absence of any rules framed by Government under s. 10 of the Madras Police Act, a departmental

MADRAS REGULATION—1802—XXV —*continued.*

[25 W. R., P. C., 5

4. ——— *Alienation of proprietary rights.*—Regulation XXV of 1802 strictly

A permanent lease is as much within the operation of Regulations XXV and XXX of 1802 as an absolute transfer by gift or sale. SUBBARAYULU NAYAK *v.* RAMA REDDI . . . . . 1 Mad., 141

——— ss. 4, 12—*Zamindar's*

liable to pay jodi in excess of the rate fixed by the Inam Commissioner and specified in the inam title-deed granted by him for the village in 1869. *Held* (1) that the decision of the Inam Commissioner did

was fixed; (2) that the defendants were jointly and

SOBHANADRI APPA RAU *v.* GOPALKRISTNAMMA [I. L. R., 16 Mad., 34

——— s. 8.

See KARNAM . I. L. R., 20 Mad., 145

MADRAS REGULATION—1802—XXV —*continued.*

See MADRAS LAND REVENUE ASSESSMENT ACT . I. L. R., 19 Mad., 292, 308
[I. L. R., 22 Mad., 270
L. R., 26 I. A., 16

1. ——— *Perpetual lease*—

2. ——— *Alienation by zamindar—Limitation.*—Where a zamindar alien-

land for a lengthened period on a claim of right, the plaintiff's suit was barred by the Statute of Limitations. ALI SAIB *v.* SANYASIRAZ PEDDABALIYARA SIMHULU . . . . . 3 Mad., 5

See SETÁ RAMA KRISTNA RAYUDAPPA RANGA RAO *v.* JAGUNTI SITAYAMMA GARU . 3 Mad., 67

3. ——— *Right of grantee of proprietor against purchaser from his successor.*—A zamindar granted part of his zamindari absolutely and died. His grantee was then dispossessed by a purchaser from his successor. *Held* that, as the conditions specified in Regulation XXV of 1802, s. 8, had not been observed by the former zamindar, the grant was voidable on the determination of his interest, and that consequently the disposition was legal. PITCHAKUTTICHETTI *v.* PONNAMMA NATCHIYAR . . . . . 1 Mad., 148

4. ——— *Alienation not*

CHETTY . . . . . . 4 Mad., 67

5. ——— *Permanent lease*

not registered under Regulation XXV of 1802. MUTTU VIRAN CHETTY *v.* KATTUMA NATCHIYAR [4 Mad., 463

——— s. 9—*Mad. Reg. XXVI of 1802, s. 2—Madras Land Revenue Assessment Act (Mad. Act I of 1876)—Application to Collector*

MADRAS REGULATION—1802—XXV
—concluded.

one under the provisions of Regulations XXV and XXVI of 1802, and not under Act I of 1876 BOMMARAZU v SESHAMMA I. L. R., 22 Mad., 438

———— s. 11.

See KARNAM . I. L. R., 20 Mad., 145

See MUNSIF, JURISDICTION OF. [I L. R., 12 Mad., 188

———— *Srotriyamdar—Suit to dismiss karnam*.—Under Regulation XXV of 1802, a srotriyamdar cannot sue for the dismissal of the karnam of his village. THURGA RAMACHANDRA RAU v. APPAYYA . . I. L. R., 7 Mad., 128

———— s. 12.

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF . . I. L. R., 13 Mad, 479

———— XXVI

See POSSESSION—ADVERSE POSSESSION. [I L R, 20 Mad., 6

———— XXVII.

See RESUMPTION—EFFECT OF RESUMPTION . . . . 3 Mad., 59

———— XXVIII.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—RENT . 2 Mad., 22

———— XXIX—*Karnam—Incapacity of next heir—Minority—Appointment by landholder of successor without proof before Zillah*

nation of persons to fill vacancies *Held* that, where

———— s. 5.

See KARNAM . I. L. R., 20 Mad., 145

———— ss 5, 7, 10, 16, 18.

See MUNSIF, JURISDICTION OF. [I. L. R., 12 Mad., 188

———— s. 7.

See MUNSIF, JURISDICTION OF. [I. L. R., 23 Mad., 340

MADRAS REGULATION—1802—XXIX
—continued

1 ———— *"Heirs," Meaning of.*—The word "heirs" in s. 7 of Madras Regulation XXIX of 1802 means "persons who, in the event of death, would inherit from the preceding incumbent." ARUMUGAM PILLAI v VIJAYAMMAL [I. L. R., 4 Mad., 338

2 ———— *"Heirs of pre-*

ancestral property. KRISHNAMMA v PAPA [4 Mad., 234

3. ———— The office of karnam in a zamindari village having been held by three brothers jointly in hereditary rights, the zamindar, on the death of one brother, did not fill up the vacancy, considering that the work could be well conducted by the two survivors. On the death of the survivors, their sons succeeded to the office. The zamindar, subsequently desiring to reappoint a third karnam, nominated an outsider to the joint tenancy of the office. *Held* that, as there were heirs of the last holders in existence the appointment was invalid. VENKAYYA v. SUBBARAYUDU [I. L. R., 9 Mad., 283

4. ———— *Office of karnam in a zamindari village, Succession to—Female claimant—Incapacity of next heir.*—The karnam of a zamindari village having died, leaving a widow his

woman cannot hold the office of karnam. *Held*

5. ———— *Karnam in zamindari village—Title to office.*—The holder of a karnam's office in a zamindari village, being incapaci-

the zamindar being dead, defendant No 2 was appointed by the zamindar's widow and entered on the

6. ———— *Zamindari karnam —Order of succession to hereditary office—Hindu law—Inheritance.*—A woman who had been appointed to succeed her husband, the holder of the hereditary office of karnam in a zamindari, died leaving the defendant, her daughter's son, and the plaintiff, the son of her late husband's paternal uncle. *Held* that the defendant was entitled to

MADRAS REGULATION—1802—XXIX
—*concluded.*

undivided divisible ancestral property. *Krishnamma v. Papa, 4 Mad., 234,* followed. SEETARAMAYYA *v.* VENKATARAZU . . I. L. R., 18 Mad., 420

——— s. 12.

See PUBLIC SERVANT. [I. L. R., 15 Mad., 127

——— XXX.

See LANDLORD AND TENANT—LIABILITY FOR RENT . . . 1 Mad., 3

See LEASE—CONSTRUCTION. [6 Mad., 164, 175

See MADRAS REGULATION XXV OF 1802. [1 Mad., 141

——— XXXI.

See MADRAS REGULATION XXV OF 1802. [14 B. L. R., 115 L. R., I I A., 268, 282

——— XXXII.

See PANCHAYAT . I. L. R., 15 Mad., 1

——— XXXIV.

See HINDU LAW—USURY . 6 Mad., 400 [1 Mad., 5

execut... does n... in Sou... the us... amounts to a lease of the property for the term agreed upon. PERLATHAIL SUBBA RAU *v.* MANKUDE NARAYANA . . . I. L. R., 4 Mad., 113

2. ——— *Mortgages where redemption is allowed at the end of any year.*—An instrument of mortgage whereby land is made over to the mortgagee for cultivation, and a grain rent

3. ——— *Mortgage by way of conditional sale—Mahomedan mortgagor.*—In 1832 a Mahomedan mortgaged certain land with possession, on condition that, if the money lent was not repaid within eight years, the land should be enjoyed by the mortgagee after that period as if conveyed by sale In 1883 a suit was brought to redeem. *Held* that the title of the mortgagee became absolute by virtue of the terms of the contract on default of payment

MADRAS REGULATION—1802—XXXIV
—*concluded.*

within the time specified The obligation cast by Regulation XXXIV of 1802 upon a mortgagee to account for profits does not prevent a mortgage by way of conditional sale from becoming, after the period for redemption has elapsed, an absolute sale

...NUDU . . . . I. L. R., 8 Mad., 185

——— 1803—II, s. 44.

See LAND ACQUISITION ACT, s. 11. [I. L. R., 13 Mad., 485

——— IX, s. 55.

See JURISDICTION OF CIVIL COURT—REVENUE . . I. L. R., 1 Mad., 89

——— 1804—V.

See GUARDIAN—APPOINTMENT. [I. L. R., 6 Mad., 187

See LIMITATION ACT, 1877, s. 10. [I. L. R., 5 Mad., 91.

——— s. 8.

See LUNATIC . I. L. R., 14 Mad., 289

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 11 Mad., 309 [I. L. R., 13 Mad., 197

See MISJOINDER . I. L. R., 13 Mad., 197

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES. [I. L. R., 11 Mad., 309

See SALE IN EXECUTION OF DECREE—DECREES AGAINST REPRESENTATIVES. [I. L. R., 5 Bom., 14

——— ss. 14 and 20.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS. [I. L. R., 10 Mad., 44

——— s. 17.

See COLLECTOR . I. L. R., 19 Mad., 255

——— s. 20.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY. [I. L. R., 12 Mad., 445

——— 1805—I.

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE. [I. L. R., 4 Mad., 335, 335 note

——— s. 18.

See SALT, ACTS AND REGULATIONS RELATING TO, MADRAS . I. L. R., 3 Mad., 17 [I. L. R., 1 Mad., 278

——— 1808—VII.

See LIMITATION ACT, 1877, s. 10. [I. L. R., 5 Mad., 91

MADRAS REGULATION—*continued.*

——— 1816—IV.

See CONTEMPT OF COURT—PENAL CODE, s. 174 . I. L. R., 6 Mad., 249

See EXECUTION OF DECREE—MODE OF EXECUTION—GENERALLY, ETC. [I. L. R., 9 Mad., 378

See LIMITATION ACT, 1877, s. 6. [I. L. R., 9 Mad., 118

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GENERAL CASES. [5 Mad., 45

See SUBORDINATE JUDGE [I. L. R., 5 Mad., 222

See TRANSFER OF CIVIL CASE—GENERAL CASES . I. L. R., 8 Mad., 500

See VALUATION OF SUIT—SUITS. [6 Mad., 151

——— s. 17—*Vakil's fees before village panchayats.*—S. 17 of Regulation V of 1816 has not been repealed by subsequent enactments GOPALU *v.* VENKATADOSS [I. L. R., 7 Mad., 552

——— VI, s. 8.

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT [7 Mad., 182

——— s. 27.

See OATH . . 4 Mad., Ap., 3

——— VII.

See PANCHAYAT . I. L. R., 8 Mad., 569

——— XI.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS REGULATION IV OF 1821 I. L. R., 5 Mad., 268

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE. [I. L. R., 23 Mad., 540

——— s. 5.

See ESCAPE FROM CUSTODY. [I. L. R., 17 Mad., 103

——— s. 10.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS REGULATION XI OF 1816 . 5 Mad., Ap., 32

——— *Mussulman, Status of—Punishment in stocks.*—A Mussulman is not of the lower castes of the people punishable, under s. 10 of Madras Regulation XI of 1816, by confinement in the village stocks. QUEEN *v.* NABI SAHEB [I. L. R., 6 Mad., 247

MADRAS REGULATION—*continued.*

——— XII.

See COLLECTOR . . 4 Mad., Ap., 1 [I. L. R., 8 Mad., 569

See MADRAS REGULATION V OF 1822. [1 Mad., 230

See PANCHAYAT . I. L. R., 8 Mad., 569 [I. L. R., 15 Mad., 1

——— XIII.

See STAMP—MADRAS REGULATION XIII OF 1816 . . I. L. R., 7 Mad., 440

——— XIV.

See PLEADER—APPOINTMENT AND APPEARANCE . . 4 Mad., Ap., 43

See PLEADER—REMUNERATION. [1 Mad., 369

——— XV—*Procedure—Pleading—Allegation of division.*—According to Regulation XV of 1816 of the Madras Code, in a suit for possession of joint family property in which the title of the plaintiff depended on the fact of a division having taken place in the family, a distinct averment of division must be made in the cause, and a direction given by the Court for the production of evidence in proof of such an averment. VIJYA RAGANADHA BODHA GOOROO SWAMY PERRIA WOODAI TAYER *v.* ANGA MOOTOO NATCHIAR [6 W. R., P. C., 50 3 Moore's I. A., 278

——— 1817—VII.

See ACT XX OF 1863 . 5 Mad., 334 [7 Mad., 77 I. L. R., 17 Mad., 95, 212 I. L. R., 22 Mad., 223

See ENDOWMENT . . 7 Mad., 306

See HINDU LAW—ENDOWMENT—SUCCESSION IN MANAGEMENT. [I. L. R., 7 Mad., 499

See JURISDICTION OF CIVIL COURT—ENDOWMENT . . . 7 Mad., 117

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION [I. L. R., 1 Mad., 55

——— s. 12.

See RIGHT OF SUIT—ENDOWMENTS, SUITS RELATING TO [I. L. R., 13 Mad., 277

——— 1818—VIII.

See APPEAL TO PRIVY COUNCIL—STAY OF EXECUTION PENDING APPEAL. [6 Moore's I. A., 300

——— 1821—IV.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MAD. REG. IV OF 1821. [I. L. R., 5 Mad., 268

MADRAS REGULATION—*continued.*

——— **1822—V.**

See Landlord and Tenant—Liability for Rent . . . 1 Mad., 3

See Res Judicata—Competent Court—Revenue Courts . 2 Mad., 22, 475

See Small Cause Court, Mofussil—Jurisdiction—Rent. [2 Mad., 22, 475

——— *Mirasidar*—Regulation V of 1822 is inapplicable to land held under a mirasidar or any ordinary proprietor. Yanamandram Venkaya v. Shillakuru Venkata Naraina Reddy [1 Ind. Jur., O. S., 131

S. C. Enamandaram Venkayya v. Venkata Narayana Reddi. . . . 1 Mad., 75

——— s. 8—*Proprietor of per-*

[illegible]

——— s. 18—*Disputes regarding irrigation—Mad. Reg. XII of 1816.*—Regulation V of 1822 does not apply to disputes respecting irrigation. The disputes mentioned in s. 18 of Regulation V of 1822 are subjected to the procedure provided by Regulation XII of 1816. Ragavendra Rau v. Mahomed Kanitaraganar 1 Mad., 230

——— **IX.**

See Collector . . 2 Mad., 322

——— s. 5—*Sale of land to recover fine imposed by Collector—Title of purchaser.*—A sale of land under the provisions of s. 5 of Regulation IX of 1822 does not convey to the purchaser a title free from prior incumbrances. Raman v. Hassan . . . I. L. R., 9 Mad., 247

——— ss. 29, 35—*Remedy con-* [illegible] provided by Village Mun- [illegible] artics to suits [illegible] v. Pakrichi [I. L. R., 9 Mad., 385

——— **1825—II.**

See Stamp—Madras Regulation II of 1825 . . I. L. R., 16 Mad., 419

——— **1828—VII.**

See Collector . . 2 Mad., 322 [I. L. R., 7 Mad., 420

——— **1831—IV.**

See Attachment—Subjects of Attachment—Annuity or Pension. [4 Mad., 277

See Grant—Construction of Grants. [13 W. R., P. C., 33 13 Moore's I. A., 104

MADRAS REGULATION—1831—IV—*concluded.*

See Grant—Resumption or Revocation of Grant. [I. L. R., 14 Mad., 431

See Inam Commissioner . 2 Mad., 341

——— **VI.**

See Hereditary Offices Regulation Mad. Reg. VI of 1831.

——— **X.**

See District Judge, Jurisdiction of. [I. L. R., 6 Mad., 187

——— ss. 1, 2, 3.

See Sale for Arrears of Revenue—Setting aside Sale—Other Grounds. [I. L. R., 10 Mad., 44

——— **1832—XI.**

See Treasure Trove . 7 Mad., 150

——— **1833—III.**

See Valuation of Suit—Suits [6 Mad., 151

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865).

See Cases under Appeal—Madras Acts, Madras Rent Recovery Act. [4 Mad., 237, 251 I. L. R., 4 Mad., 167

See Jurisdiction of Civil Court—Pottahs . I. L. R., 12 Mad., 481 [I. L. R., 13 Mad., 361 I. L. R., 14 Mad., 441 I. L. R., 17 Mad., 1

See Cases under Jurisdiction of Revenue Court—Madras Regulations and Acts.

See Lease—Construction. [6 Mad., 164, 175

See Possession—Adverse Possession. [I. L. R., 20 Mad., 6

See Registration Act, 1877, s. 17. [7 Mad., 234

See Res Judicata—Competent Court—Revenue Courts. [I. L. R., 17 Mad., 106

See Review—Orders subject to Review . . . 4 Mad., 251

See Small Cause Court, Mofussil—Jurisdiction—Moveable Property. [I. L. R., 11 Mad., 264

See Statutes, Construction of. [6 Mad., 122

1. ——— s. 1—*Inamdar—Mad. Reg. XXV of 1802.*—S. 1 of Madras Act VIII of 1865 does not confine the term "inamdar" to such inamdars as are registered. *Held* therefore that the purchaser of

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*continued.*

an inam village, who had not got his name registered as inamdar, was not thereby debarred from enforcing

2. ——————— *Landholder—Poligar of*

GOUNDEN *v.* VENKATARAMANIER . 5 Mad., 208

3. ——————— and s 2—*Inamdar—Quit-rent.*—An inamdar entitled to receive a jodi or quit-rent from other inamdars may have recourse to the summary remedies provided by Act VIII of 1865 (Madras) for the recovery of the quit-rent. APPASAMI *v* RAMA SUBBA . I. L. R., 7 Mad, 262

4. ——————— *Landholder—Distraint.*—*V* leased certain fields to *S* at a single rent. Of these fields some were held by *V* under a raiyatwari pottah, but the pottah for the rest stood in the names of *V*'s vendors. *V* distrained for arrears of rent under the provisions of the Rent Recovery Act *Held* that *V* was not a landholder within the definition in the said Act in respect of the latter fields, and therefore that the distraint was illegal. SUBBA *v.* VENKATA . . . I. L. R., 8 Mad., 9

5. ——————— and s. 3—*Zamindar Delegating powers to mortgagee*—Where a zamindar executed a usufructuary mortgage-deed of part of his zamindari and by the deed delegated all his powers under the Rent Act (Madras Act VIII of

6. ——————— and s 79—*Landholder—"Farmer"—Assignee of landholder—Mortgagee of landholder, Position of.*—A mortgagee of a "landholder," as defined in Madras Act VIII of 1865, s. 1, may exercise the powers of landholder under the

7. ——————— *Landholder—Assignee of pottah.*—A zamindar hypothecated certain villages

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*continued.*

hypothecation deed and the lease, was not a "landholder" within the meaning of Madras Act VIII of 1865. ZINULABDIN ROWTEN *v.* VIJIEN VIRAPATHEN [I. L. R., 1 Mad., 49

8. ——————— *Landholder—Assignee—Delegation of powers*—The interest of *B* in the farm of a jaghir, which he had obtained on lease from the jaghirdar, was sold in execution of a decree and purchased by *J*, who assigned his interest to the

Full Bench [TURNER, *C.J.*, MUTTUSAMI AYYAR,

9. ——————— *Landholder—Manager of estate and until debt is paid—Increase of rent for garden cultivation and second crops*—An instru-

10. ——————— and s. 13—*Inamdar*—

that entered in the Inam Commissioner's pottah. *Held* (1) that the inamdar was a tenant of the

YANARAYANA *v.* APPA RAU [I. L. R., 16 Mad., 40

1. ——————— s. 2—*Tenant—Lessee of zamindar—Limitation*—In 1869 a village in the zamindari of

chased at the sale by the agent of the Court of Wards on behalf of the defendants, minor sons of the deceased zamindar. In a suit brought by *S* in 1883

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*continued.*

to recover the village,—*Held* that the sale was binding on *S*, and that the suit was barred by limitation. BASKARASAMI *v.* SIVASAMI . I. L. R., 8 Mad., 196

2. ———— *Limitation.*—In a suit by a tenant against a zamindar to release an attachment made under the Madras Rent Recovery Act, s. 40, it appeared that, according to the kistbandi obtaining in the zamindari, rent was payable in monthly instalments, commencing with November in each Fasli. *Held* that the unit for the rule of limitation prescribed by Rent Recovery Act, s. 2, for proceedings by the landlord was the aggregate rent in arrear at the end of the Fasli. APPAYASAMI *v.* SUBBA [I. L. R., 13 Mad., 463

1. ———— s. 3—*Purchaser of zamindari village without separate assessment—Landholder.*—A zamindar having mortgaged one of his zamindari villages to *V*, a proportionate amount of the peshkush due by the zamindar was paid to the treasury by *V* by agreement. Having sued the zamindar, and [illegible]

2. ———— *Purchaser of four shares in shrotriyam village—Landholder.*—Where the holders of shares in a shrotriyam village have not [illegible] from [illegible] everal [illegible] r the [illegible] nforce acceptance of a pottah by the tenants in respect of the proportionate rent payable to him KRISHNAMACHARI *v.* GANGARAU REDDI . I. L. R., 5 Mad., 229

3. ———— *Landholders—Mulgar—Quære*—Whether a mulgar is within the class of landholders defined in the Madras Rent Recovery Act, s 3. KRISHNA *v.* LAKSHMINARANAPPA [I. L. R., 15 Mad, 67

4. ———— *Registered zamindar—Zamindari held in co-parcenary—Co-sharers, Right of one of several to sue*—A registered holder of a zamindari sued under the Madras Rent Recovery Act to enforce the acceptance of a pottah and execution of a muchalka by the defendant, a tenant on the estate. It was pleaded in defence that the zamin- [illegible]

5. ———— and ss 4 and 7—*Contents of pottah—Date of tender of pottah.*—A landlord within three days of the end of the Fasli tendered to a tenant by way of pottah a document containing a statement of account of rent payable in respect of the current Fasli *Held* that the document tendered was a good pottah, and that under local custom a valid tender of a pottah may be made at the end of the Fasli. NARAYANA *v.* MUNI [I. L. R., 10 Mad., 363

6. ———— and ss. 4, 9—*Landlord and tenant—Right to enforce acceptance of pottah.*—The renter of a zamindari, to whom the right to collect the *kattubadi* or *quit-rent* on *inam lands* and the road-cess payable to Government was delegated, sued to compel the inamdars to accept pottahs and execute muchalkas for the amounts due. *Held* that the inamdars, not being cultivating tenants, were not bound, under Act VIII of 1865 (Madras), to accept a pottah. *Ramasami* v. *Collector of Madura, I. L. R., 2 Mad., 67,* referred to. RAMA *v.* VENKATACHALAM . . . I. L. R., 8 Mad., 576

7. ———— and ss. 8, 9, and 11—*Agreements between landlords and tenants*—The pottahs and muchalkas mentioned in s. 3, Madras Act VIII of 1865, must be understood to embrace those written agreements only which are mutually interchanged by a lordlord and those of his tenants who are actually engaged in the cultivation of the lands to which they relate, since the remedies which the Act provides in ss. 8 and 9 can only be made [illegible]

be, can come into Court and claim to have a writing granted to him. *Semble*—If a lease granted by a zamindar to an intermediate holder could be considered a pottah within the meaning of s. 3 of Madras [illegible] under the proviso to s 11 [illegible] the successor [illegible] rate than that generally payable on such lands, a [illegible] ot for the purposes mentioned in the said proviso. RAMASAMI *v.* BHASKARASAMI. RAMASAMI *v.* COLLECTOR OF MADURA . . . . I. L. R., 2 Mad., 67

[illegible] LAKSHMINARAYANA PANTULU *v.* VENKATARAYANAM [I. L. R., 21 Mad., 116

9. ———— *Mad. Reg. XXV of 1802, s. 8—Non-registration of landholder—Subsequent registration of undivided brother of land-* [illegible]—Suits for ex- [illegible]

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*continued.*

members of the family *Held* that, in the absence of registration under s 8 of Regulation XXV of 1892, the landholder was not entitled to enforce acceptance of pottah under the provisions of the Rent Recovery Act, and that there was no cause of action under that Act. The original defect of title was not cured by the subsequent registration of the landholder in the name of the plaintiffs' undivided brother *Valamarayyan v. Virappa Kandian, I L R., 5 Mad., 145*, and *Ayyappa v Venkatakrishnamarazu, I. L R, 15 Mad., 494*, followed. RAGHAVA REDDI *v.* KANNI GRAMANI . . . I. L. R., 23 Mad., 221

——— s 4.

See LEASE—CONSTRUCTION [I. L. R., 11 Mad., 200

1. ——— *Suit for rent—Summary suit to enforce acceptance of pottah*—A suit for

. . . I Mad., 110

2. ——— *Pottah for palmyra palm trees.*—Under Madras Act VIII of 1865, a landlord may compel a tenant to accept a pottah for palmyra trees. MUTTUSAMY MUDALY *v.* SADAGOPA GRAMANY [4 Mad., 398

3. ——— *Landlord and tenant—Exchange of pottahs*—The pottahs and muchalkas required by Madras Act VIII of 1865 should be made and exchanged during the existence, but not necessarily at the commencement, of the tenancy, the terms of which they are meant to express The 4th section of the Act requires no more than that the pottahs should mention the rate and proportion of the produce to be given, and not the specific quantity or number of measures SESHADRI AYYANGAR *v.* SANDANAM [I. L. R., 1 Mad., 146

4. ——— *Water-tax collected for Government by landholder—Water Cess Act, Madras, VII of 1865—Suit to enforce pottah.*—A landlord,

Held that the tenant was not bound to accept the pottah BACHU RAMESAM *v.* NUKALA BHAVAPPA [I. L. R., 7 Mad., 182

5. ——— and ss. 7 and 87—*Form of pottah necessary for tender by landholder.*—A pottah which professes to make the tenant liable to the person tendering it for lands not held, as well as for

6. ——— and s. 11—*Acceptance of pottah not in accordance with the Act.*—A tenant

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*continued.*

having accepted a pottah (which did not give the particulars described in s. 4 of the Madras Rent

. . . by the landlord for arrears of rent. APPA RAU *v.* VIRANNA . . I. L. R., 13 Mad., 271

7. ——— *Validity of pottah—Omis-*

——— s. 6—*Signing and registration of* . . . Madras Act VIII of 1865

——— s. 7.

See LIMITATION ACT, 1877, ART. 12. [I. L R., 20 Mad., 33

See LIMITATION ACT, 1877, ART. 131. [I. L R, 15 Mad., 161

2 ——— *Suit for arrears of rent—Tender of pottah*—Plaintiff sued for certain arrears of rent. The suit was dismissed as to Faslis 1271, 1272, and 1275, on the ground that no pottahs had been tendered for those Faslis. On special appeal

3. ——— *Tender of pottah through the post.*—Tender of a pottah through the post to a tenant is invalid under the provisions of Madras Act

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*continued.*

VIII of 1865. VENKATACHELLAM CHETTI *v.* KADUMTHUSI . . . I. L. R., 4 Mad., 145

4. ——————— *Suit for rent dismissed—Suit for use and occupation barred.*—A landlord who has failed in a suit for rent under the Rent Recovery Act cannot bring a fresh suit for use and occupation. ALI KHAN *v.* APPADU [I. L. R., 7 Mad., 304

5. ——————— and ss. 9 and 10—*Pottah tendered within Fasli—Suit after Fasli, when*

ginally tendered A landholder has a choice of two

pottah for that Fasli beyond all dispute. MUNISAMI NAIDU *v.* PERUMAL REDDI I. L. R., 23 Mad., 616

6. ——————— *Tender of pottah—Unreasonable condition.*—A tenant is not bound to accept a pottah which requires him to relinquish, at the close of the Fasli, land which he has been unable to cultivate VEDANTA CHARIAR *v.* AYYASAMI MUDALI . . . I. L. R., 4 Mad., 322

7. ——————— *Tender of pottah.*—When a Collector in a suit brought under the provisions of the Rent Recovery Act has decided that a tenant is to accept a pottah on certain terms, the landholder is not bound to tender such pottah for acceptance before suing to enforce the terms thereof COURT OF WARDS *v.* DARMALINGA . I. L. R., 8 Mad., 2

8. ——————— *Pottah—Rate of rent—Indefinite stipulations*—In a pottah tendered by a landlord to his tenant under s. 7 of Act VIII of 1865 (Madras), the rate of rent should be ascertained and declared even where the rate may vary with the

on dry land, you must pay water rate settled according to the highest nanjai assessment of neighbouring land If you occupy land in excess of that entered

MADRAS RENT RECOVERY ACT, (MADRAS ACT VIII OF 1865)—*continued.*

CHANDRA NAYUDU . . I. L. R., 7 Mad., 150

9. ——————— *Landlord and tenant—Acceptance of*

10. ——————— *Landlord and tenant—Exchange of pottah and muchalka.*—Under s. 7 of

11. ——————— and ss. 3 and 13—*Suit for recovery of rent—Exchange of pottahs and muchalkas—Tender of pottah*—Suits for the recovery of rent cannot be maintained in the Civil Courts by the landholders described in s. 3 of Madras Act VIII of 1865, unless pottahs and muchalkas have been exchanged between the landholder and the tenant as required by s. 7 of the Act, or some one of the other conditions of the section has been complied with So held by MORGAN, *C.J.*, INNES, *J.*, and KINDERSLEY, *J.* (HOLLOWAY, *J.*, *dissentiente*).

the Fasli for which rent is sought to be recovered. GOPALASAWMY MUDELLY *v.* MUKKEE GOPALIER [7 Mad., 313

VENKATASAMI NAIK *v.* SITUPATI AMBALAM [7 Mad., 350

——————— s. 8.

See THEFT . I. L. R., 16 Mad., 304

——————— *Suit to enforce tender of pottahs—Suit brought after expiration of Fasli.*—A tenant is

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*continued.*

——— s. 9.

See JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS
[I. L. R., 17 Mad., 140

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS
[I. L. R., 13 Mad., 287

1. ——— *Tender of pottah during Fasli—Suit commenced after Fasli.*—A suit to enforce acceptance of pottah under s. 9 of the Rent Recovery Act, 1865, may be instituted after the expiration of the Fasli to which the pottah relates, provided that the pottah has been tendered during the continuation of the Fasli. *Ramasami Mudaliar* v. *Rathna Mudaliar, I. L. R., 21 Mad., 148*, explained. PAPAMMA v. SUBBANNA . I. L. R., 22 Mad., 318

2. ——— and s. 51—*Refusal by tenant to accept pottah—"Cause of action"—*

brought in time. MUNISAMI NAIDU v. KRISHNA REDDI . . . I. L. R., 23 Mad., 474

3. ——— *Rate of rent where rate*

KRISTNA RAU v. SOLAYAPPA MUDALI. KRISTNA RAU v. CHINNA SUBBU MUDALI. KRISTNA RAU v. KRISHNA MUDALI . . . 6 Mad., 204

4. ——— *Landholder—Tender of pottah—Notice—Zamindar and raiyat.*—Where the parties are bound to exchange written engagements in the shape of pottahs and muchalkas, the landlord must, in order to maintain a suit under s. 9 of Madras Act VIII of 1865 to enforce acceptance of a pottah, show that he has tendered a pottah in writing. A mere indefinite demand or notice, whether written or unwritten, is not sufficient to sustain such a suit. CHANDA MIAH SAHIB v. LAKSHMANA AIYANGAR
[I. L. R., 1 Mad., 45

5. ——— *Joint shrotriyamdars—*

for Fasli 1290 and for arrears of rent. *Held* that the suit lay without joinder of the other joint shrotriyamdar. PURUSHOTTAMA v. RAJU
[I. L. R., 11 Mad., 11

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*continued.*

6. ——— *Copy of pottah—Tender of pottah.*—A landholder tendered to his tenant a notice stating that his pottah, of which the parti-

MARUTHAPPA v. KRISHNA I. L. R., 12 Mad., 253

7. ——— *Tender of pottah by post—Landlord and tenant.*—A landlord sent a pottah by post to his tenant, who declined to receive it. *Held* the tender of the pottah by post was not sufficient to support a suit under s. 9 of the Madras Rent Recovery Act. SAMINATHA v. VIRANNA .
[I. L. R., 13 Mad., 42

8. ——— *Omission to tender pottah—*

lord, not having tendered a legal pottah, was not in a condition to establish any right to recover rent directly or by way of set-off. KUILAYAPPA v. LAKSHMIPATHI . . I. L. R., 12 Mad., 467

9. ——— and s. 7—*Demand of pottah.*—The Rent Recovery Act does not require that a tenant demanding a pottah shall apply in writing to the landholder specifying the lands and the Fasli for which the pottah is required. SRINIVASA v. NARAYANASAMI . . I. L. R., 8 Mad., 1

10. ——— and s. 10 and s. 7—*Suit to enforce terms of tenancy—Suit to determine terms of tenancy—Pottah—Jurisdiction of Revenue Court.*—A suit under s. 9 of Madras Act VIII of 1865 to enforce the acceptance of a pottah is not a suit to enforce the terms of a tenancy within the meaning of s. 7 of the same Act, but a suit to determine those terms. ZAMINDAR OF DEVARACOTA v. VEMURI VENKAYYA . . I. L. R., 1 Mad., 389

11. ——— and ss. 10, 11.—A

I. L. R., 11 Mad., 13

12. ——— and ss. 10, 11—*Improper stipulations in pottah—Claim of tenants to hold over land after expiry of lease—Civil Procedure Code, s. 511.*—In summary suits brought by a

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*continued.*

andlord to enforce acceptance by his tenants of pottahs tendered by him for the current Fasli, it was pleaded that the pottahs were improper in that they did not comprise certain land of which the tenants were in possession and in which they claimed permanent occupancy rights, and also in that they contained various terms which the plaintiff was not entitled to impose on the defendants, providing (*inter alia*) (1) that interest should be payable on the several instalments of rent as they became due; (2) that the defendant should not fell certain trees except for agricultural purposes; (3) that the defendants should

cultivation, the tenancy should be forfeited in case of default made by the defendants in paying the amount of Government assessment, and also an undetermined sum then to become payable by the defendants to the plaintiff in addition to the rent. The defendants failed to prove the permanent occupancy rights claimed over the land not comprised in the pottahs, and it appeared that they had held leases from the plaintiff for the land in question for a period of three years and had held over after the expiry of the leases without the permission and contrary to the wishes of the landlord, and it further appeared that the provision as to trees did not extend to shrubs, etc., and had been an accepted term in the pottahs issued for ten years. The Revenue Court modified the terms of the pottahs and passed decrees that the pottahs as modified be accepted, against which some only of the defendants appealed, and the District Judge on appeal introduced further modifications into the pottahs. *Held* (1) that the District Judge had no jurisdiction under Civil Procedure Code, s. 544, to introduce further modifications into the pottahs in favour of the defendants who had not appealed according to the opinion formed by him in appeals preferred by the defendants in other suits; (2) that the defendants were not entitled to have the ... the land ... the pro- ... (3) that ... pottahs modified by the cancellation of the provision as to reaping crops and of the provision for forfeiture. RANGAYYA APPA RAU *v.* KADIYALA RATNAM [I. L. R., 13 Mad., 249

13. ——— and ss. 79, 80—*Veo-* ...

three years and obtained registration of his title. He now filed this suit to enforce acceptance of pottahs tendered by him to the raiyats, who had already accepted pottahs from, and executed muchalkas to, the assignee. *Held* that the suit was not maintainable, as under the circumstances the plaintiff's ...

MANYA . . . . I. L. R., 11 Mad., 12

——— s. 10.

See JURISDICTION OF CIVIL COURT—POTTAHS . . I. L. R., 17 Mad., 1

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS . I. L. R., 9 Mad., 39 [I. L. R., 21 Mad., 482

See JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS. [I. L. R., 17 Mad., 140

...

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622. [I. L. R., 16 Mad., 451

1. ——— *Power of Collector to enforce ejectment for default—"Default," Meaning of.—Quære*—Whether a Collector can enforce ejectment for the default specified in s. 10 of the Rent Act, where the ultimate judgment in the case has been that of an Appellate Court, and not of his own Court. *Semble*—"Default" in s. 10 of the Rent Act means wilful default. YAKUB SAHIB *v.* JAFFER ALI SAHIB . . I. L. R., 4 Mad., 167

2. ——— and s. 69.—A landlord ... Recovery Act ...

... Revenue Court ordered the tenant to be ejected. *Held* that s. 10 of the Rent Recovery Act (which provides that, if within ten days from the date of the Collector's judgment the defendant shall not have accepted the pottah as approved or amended by the Collector, and shall not have executed a muchalka in the terms of the said pottah, the Collector, on proof of such default, shall pass an order for ejecting the defendant) did not warrant the order. YAKUB *v.* NARASINGA . . I. L. R., 7 Mad., 573

1. ——— s. 11—*Water-cess—Tenants—Cultivation improved by water taken from landlord's tank.*—A landlord has a right to charge water-cess when his tenant cultivates a wet crop on dry land or a second wet crop on wet land by means of water taken from the landlord's tank. THAYAMMAL *v.* MUTTIA . . . I. L. R., 10 Mad., 283

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*continued*

2. ———— cls. 1, 2, 3, 4—*Improvements effected by tenant—Enhancement of rent—Sanction of Collector*.—The sanction of the Collector required by the proviso to cl. 4, s 11 of the Rent Recovery Act, as a condition precedent to the enhancement of rent when the landlord has improved the land or has had to pay additional assessment to Government, is not requisite when, improvements having been made by the tenant, the landlord seeks to enhance the rent. *Per* MUTTUSAMI AYYAR, J.—The proviso to cl 4 of s 11 of the Rent Recovery Act implies that, when the tenant has improved the land at his own expense, the landlord is not entitled on that ground to enhance the rent *Semble*—Cl. 1 of s 11, which provides that all contracts

3. ———— rule 3—*Rate of rent, Determination of—Neighbouring lands of similar kind.*—The provision in Madras Act VIII of 1865,

determination of the proper ... cular lands, the existence of a fixed general rate of rent for neighbouring lands of similar description and quality. The words "according to the rates established or paid" import clearly the power to

4. ———— *Implied contract.*—Where a landlord, having for many years accepted rent at "dry" rates from a tenant for certian land,

5. ———— *Provision in pottah for increasing rate of assessment for garden cultivation.*—A provision in a pottah for increasing the rate of assessment if garden cultivation is carried on, or if a second crop is raised, is not illegal, but comes

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*continued.*

within the provisions of s 11 of Act VIII of 1865. VAYTHENATHA SASTRIAL *v.* SAMI PANDITHER

[I. L. R., 3 Mad., 116

6. ———— *Enhancement of rent—Custom.*—The imposition by a zamindar of garden assessment on land brought under garden cultivation by a tenant who improved the land by sinking a well after 1865 is illegal, although there might be a custom in the zamindari of charging a varying assessment according to the kind of crop raised. FISCHER *v.* KAMAKSHI PILLAI

[I. L. R., 21 Mad., 136

7. ———— rule 4—*Hindu law—Alienation—Power to make leases.*—The second proviso contained in rule 4, s 11, Madras Act VIII

benefit of the grantee and to the prejudice of the successor. RAMANADAN *v.* SRINIVASA MURTI

[I. L. R., 2 Mad., 80

8. ———— *Change of cultivation—Sanction of Collector.*—Where a landlord claimed to revert to nanjai rates (assessed on irrigated land) of rent on the ground that he had repaired a tank, which for years had been unrepaired,—*Held* that the sanction of the Collector was not required by s 11 of the Rent Recovery Act. LAKSHMANAN CHETTI *v.* KOLANDAIVELU KUDUMBAN

[I. L. R., 6 Mad., 311

9. ———— *Sanction of Collector—Suit for increased assessment on ground of improvements.*—In a suit before the Collector under

... the land formerly cultivated ...

10. ———— *Implied contract as to rates of rent—Customary fees—Restraint on building—Landlord and tenant.*—In order to support the inference of a contract under the Madras

a contract from a single lease for five years. A pottah is not unenforceable by reason of its providing

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*continued.*

for the payment of fees to village artizans in a case

[I. L. R., 17 Mad., 73

11. ———— *Assignee of revenue*

12. ———— *Reduction of assess-*

the rent at the reduced rate R10. The document provided "this sum of R40 you are to pay perpetually every year per kistbandi in the mitta catcheri." It appeared that the rent fixed was less than what was payable upon the lands previous to the date of the pottah and also less than that payable upon neighbouring lands of similar quality and description. *Held* that the reduction in the rate of rent was not invalidated by Rent Recovery Act, 1865, s. 11. FOULKES *v.* MUTHUSAMI GOUNDAN

[I. L. R., 21 Mad., 503

13. ———— *Reduction of rent—Improvements by tenant—Whether grant of reduction binding on successors.*—Where a landholder has granted a reduction of rent otherwise properly payable in respect of land, the mere fact that the

14. ———— and s. 9—*Condition of pottah—Established rates of rent—Rent in kind.*—The zamindar of Vallur sued certain raiyats in his pergunnah of Gudur to enforce the acceptance of pottahs providing, among other conditions, that the raiyats should relinquish their holdings at the end of the term unless fresh pottahs were tendered to

present defendants were already in occupation of

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*continued.*

their respective holdings. In the interval, Government collected village rents in money. The pergunnah

zamindar was entitled to collect, by way of rent from the raiyats respectively, the quota of the village rents which each raiyat paid in 1861. He found, however, that there was no contract, express or implied, as to the rent to be paid; and that prior to 1851 the raiyats held their lands under the zamindar on the sharing system, and that for the first year after the restoration of the pergunnah the arrangement enforced by Government had remained in force, but that from 1863 to 1870 the sharing system was in force, and varam was paid by the raiyats, after which for five years individual money rents were collected, and then there were two leases with money rents each for a period of five years. *Held* (1) that

(2) the

that the rent should be discharged in kind according to the established rate of varam in the village; (3) that the plaintiff was entitled to recover from the raiyats half the water-tax payable on the poramboke lands irrigated from the Kistna anicut. VENKATA NARASIMHA NAIDU *v.* RAMASAMI

[I. L. R., 18 Mad., 216

15. ———— *Suit to assess proper rate of rent—Determination of rate of rent.*—In a suit by the plaintiffs as inamdars to compel the defendants, occupiers of plaintiffs' land, to accept pottahs under Madras Act VIII of 1865, the defendants objected to the rates of rent claimed by the

YAN. GOPALIYAN *v.* MAHASINGAVASIHA AIYAN

[5 Mad., 425

16. ———— *Contract to pay a certain rent implied from payment in past years*—S. 11 of the Rent Recovery Act provides that in the decision of suits involving disputes regarding rates of rent which may be brought before Collectors under ss. 8, 9, and 10, all contracts for rent, express or implied, shall be enforced. *Held* that payment of rent in a particular form at a certain rate for a number of years is not only presumptive evidence of the existence of a contract to pay rent in that form or at that rate for those years, but is also presumptive evidence that the parties have agreed that it is obligatory on the one party to pay and the other to receive rent in that form and at that rate, so long as the relation of landlord and tenant may continue. VENKATAGOPAL *v.* RANGAPPA

[I. L. R., 7 Mad., 365

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*continued.*

17. ———— *Enhanced rent on irrigated land—Sanction by Collector of enhanced rent—Customary contribution to a temple—Implied contract—Landlord and tenant.*—A zamindar tendered to raiyats on his estate pottahs providing (*inter alia*) for the payment of (1) certain fees to a Hindu temple, (2) rent in which the land assessment was consolidated with a water-cess in respect of certain

Madras Rent Recovery Act, s 11, but it was found

a raiyat to make, and consequently that the pottah tendered to him was an improper pottah; (2) that

v. MALLIKARJUNA PRASADA NAYUDU [I. L. R., 17 Mad., 43

18. ———— *Enhanced rent on irrigated land—Sanction by Collector of enhanced rates of rent—Implied contract to pay rent at a certain rate—Landlord and tenant.*—In a suit

in *Venkatagopal* v. *Rangappa, I. L. R., 7 Mad., 365,* the Court stated what was the principle to be kept in view in considering whether an implied contract to pay enhanced rent could be inferred. MALLIKARJUNA PRASADA NAYUDU *v.* LAKSHMINARAYANA . I. L. R., 17 Mad., 50

19. ———— *Enhanced rent on irrigated land—Sanction granted by Head Assistant Collector—Customary rent—Implied contract—Restraint on building—Landlord and tenant*—A Head Assistant Collector is competent to grant a sanction for the enhancement of rent under the Madras Rent Recovery Act, s 11. The granting of such sanction is a judicial and not a merely administrative act, and such sanction should not be granted without first giving notice to both the landlord and the tenant, and hearing and considering the contentions of both parties In a suit by the landlord to enforce the exchange of a pottah and muchalka, the tenant objected to the rate of rent imposed on part of the land, which was dry land converted into wet. *Held* that the finding of the lower Appellate Court that there was an implied

wells which had been constructed by the raiyat at his own cost, and also comprised a stipulation that the raiyat should not build on his holding The Court of first appeal held that the special rate of rent above referred to was customary, and had been followed for many years. *Held* that there was no ground for interference on second appeal with the

20. ———— *Implied contract as to rent—Land irrigated under Kistna anicut—Collector's sanction to increase of rent.*—Land in a zamindari in the Kistna delta was newly irrigated from anicut channels. The zamindar tendered pottahs at wet rates. *Held* (1) that the zamindar was not entitled to levy increased rates without the Collector's sanction under s 11 of Madras Act VIII of 1865, although he had expended money on the channels, (2) that payment for five years of such wet rates under a five years' lease did not imply a contract to continue such payments; (3) that a

21. ———— *Lands irrigated from Kistna anicut—Madras Act VII of 1865, s. 4—Restriction as to felling trees—Implied contract as to rent.*—A zamindar holding lands irrigated by the Kistna anicut, from whom no extra peishcush is on that account levied by Government, is not entitled to impose on his tenants a "wet" rate of rent without the permission of the Collector under s. 11 of Madras Act VIII of 1865. The fact that the tenants have paid rent at such a rate for six years is not sufficient to establish an implied covenant to continue to do so It is allowable for a landlord to insert in his pottahs a term to the effect that the tenant shall not fell

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*continued.*

trees without his consent. APPARAU *v.* NARASANNA . . . I. L. R., 15 Mad., 47

22. ———— *Form of pottah—Form of rent determined by implied contract—Variation in amount of rent*—In a landlord's suit to enforce acceptance of a pottah and execution of a muchalka by the defendants, it appeared that the predecessor in title of the defendants had accepted from the predecessor in title of the plaintiff in 1849 a cowle for eleven years, which provided for payments in kind, but since the expiry of that period the rent had always been paid in money, though the amount varied. The tenant was described in the cowle as a sukavasi raiyat, and the defendants also claimed to be sukavasi tenants. *Held* that it was unnecessary to determine the cause of the variations in the amount of rent, and that an agreement that the rent should continue to be paid in money should be implied, and the landlord accordingly was not entitled to impose a pottah providing for payment of rent in kind POLU *v.* RAGAVAMMAL . . I. L. R., 14 Mad., 52

———— s. 12.

See JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS. [7 Mad., 53

See LANDLORD AND TENANT—ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE . I. L. R., 13 Mad., 124 [I. L. R., 15 Mad., 67

See ONUS OF PROOF—LANDLORD AND TENANT . I. L. R., 16 Mad., 271

1. ———— *"Tenants"—Term not restricted to agricultural tenant*—S 12 of the Rent Recovery Act provides that tenants ejected without due authority by landholders may bring a summary suit before the Collector to obtain reinstatement with damages. *Held* that the word "tenants" is not restricted to agricultural tenants only, but includes the permanent lessee of a mitta. SUBBARAYA *v.* SRINIVASA . . I. L. R., 7 Mad., 580

See BASKARASAMI *v.* SIVASAMI [I. L. R., 8 Mad., 196

2. ———— *Issue of pottah, Effect of—Receipt of rent—Suit for possession—Ejectment*—[illegible] Madras [illegible] the [illegible] than [illegible] does [illegible] ncy; [illegible] ough [illegible] from [illegible] not bound merely to receive rent. SATHIANAMA BHARATI *v.* SARAVANABAGI AMMAL I. L. R., 18 Mad., 266

———— s. 13—*Persons entitled to proceed under Act—Attachment, Validity of.*—*A* granted two villages in perpetuity to *B* under a deed, reserving a certain rent to himself which was to be recovered "according to the Act" if it fell into arrear. The rent remained unpaid for two years, and *A* obtained an attachment for the whole arrear under the Madras Rent Recovery Act *Held* (1) that *A* was entitled to proceed as landlord under the Madras Rent Recovery Act; (2) that the attachment held good for such amount of rent as was recoverable under that Act. *Ramasami v. Collector of Madura, I. L. R., 2 Mad., 67,* discussed. RAMACHANDRA *v.* NARAYANASAMI [I. L. R., 10 Mad., 229

———— s. 14—*Suit for rent—Limitation*—When a tenant has executed a muchalka specifying the dates on which the various instalments of rent are payable, the period of limitation for a suit by the landlord for the rent is to be computed from such dates. VENKATAGIRI RAJAH *v.* RAMASAMI [I. L. R., 21 Mad., 413

———— s. 15.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—WRONGFUL DISTRAINT. [I. L. R., 22 Mad., 457

———— ss. 15, 17.—Where a landlord has distrained for rent, and the distraint has been set aside under the provisions of the Rent Recovery Act, the landlord is debarred by s. 17 from taking further proceedings under the Act in respect of the arrears for which the distraint was made. RAMA *v.* CHENGALVARAYA . . I. L. R., 7 Mad., 429

1. ———— s. 17—*Attachment and sale of the tenant's interest in the land for arrears of rent—Declaration of invalidity of attachment.*—When defa[illegible] rent, and the [illegible] ant in the [illegible] not be decla[illegible] s 17 of th[illegible] KULAN-DAVELU [illegible] I., 465

2. ———— and ss. 18 and 40—*Suit to recover produce illegally distrained for rent—Wrongful distraint.*—The defendants, the landlords, distrained certain produce, the property of [illegible] ... I. L. [illegible]

3. ———— and s 20—*Summary suit for wrongful distraint—Limitation—Cause of action*—A refusal to restore property improperly distrained under the Rent Recovery Act (Madras Act VIII of 1865) after the attachment has been set aside and the property ordered to be restored under s. 17 of the Act, is not a cause of action upon which a

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865) *—continued.*

summary suit can be brought under s. 20. The cause of action in such a case is the illegal distraint, and the continued detention of, and refusal to restore, the property are only aggravations of that wrong *Semble*—A summary suit under s. 17

[illegible]

limitation for a suit under s. 17 must be computed, if not from the date of the distress, at any rate from the date the distress was declared illegal. BHAGIRATHI PANDA *v.* PADALA GOPALUDU

[I. L. R., 3 Mad., 121

——— s. 18.

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY

[I. L. R., 20 Mad., 498

——— *Attachment and sale of the*

[illegible]

current revenue year. THAYAMMA *v.* KULANDAVELU

[I. L. R., 12 Mad., 465

——— s. 27.

See APPEAL—DECREES

[I. L. R., 13 Mad., 248

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—WRONGFUL DISTRAINT.

[4 Mad., 401

——— s. 33.

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—OTHER GROUNDS.

[I. L. R., 8 Mad., 6

——— s. 35.

See STAMP ACT, 1869, s. 3 . 8 Mad., 112

——— and s. 76—*Sale of tenant's*

[illegible]

——— s. 38.

See ATTACHMENT—ALIENATION DURING ATTACHMENT . I. L. R., 8 Mad., 573

See SALE FOR ARREARS OF RENT—INCUMBRANCES . . I. L. R., 7 Mad., 31

[I. L. R., 2 Mad., 234

[I. L. R., 10 Mad., 266

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS

[I. L. R., 6 Mad., 423

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865) *—continued.*

——— ss. 38 and 39.

See LIMITATION ACT, 1877, ART. 12.

[I. L. R., 20 Mad., 3

1. ——— s. 39—*Sale of immoveable pro-*

[illegible]

scribed by s. 39, the sale must be set aside NATTU ACHALAI AYYANGAR *v.* PARTHASARADI PILLAI

[I. L. R., 3 Mad., 114

2. ——— *Service by affixing notice of intention to sell on some conspicuous part of the*

[illegible]

denotes some place in the neighbourhood of the land in respect of which the pottah was tendered, and does not apply when the tenant resides in foreign territory. OLIVER *v.* ANNTHARAMAYYAN

[I. L. R., 18 Mad., 30

——— ss. 39 and 40.

See RIGHT OF SUIT—LANDLORD AND TENANT, SUITS CONCERNING.

[I. L. R., 10 Mad., 368

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R., 20 Mad., 498

——— s. 40.

See LIMITATION ACT, 1877, ART. 12.

[I. L. R., 20 Mad., 33

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R., 20 Mad., 498

See STAMP ACT, 1869, s. 3.

[8 Mad., 112

——— ss. 41, 43.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS. MADRAS.

[5 Mad., 289

——— s. 44—*Delivery of possession—Appeal—Limitation.*—*A* obtained a warrant ejecting *B* for arrears of rent under s. 41 of the Rent Recovery Act. *B* appealed within fifteen days, but *A* was put into possession on 13th May 1882 *B's* appeal came on for hearing, and was dismissed on 13th June 1883. *B* instituted this suit to recover possession of the land on 28th July 1883. *Held* that *B's* suit was not time barred under s. 44 of the Rent Recovery Act. PADSHA *v.* TIRUVEMBALA

[I. L. R., 9 Mad., 479

——— s. 49.

See DEPUTY COLLECTOR, JURISDICTION OF . . I. L. R., 16 Mad., 323

1. ——— s. 50—*Petition sent by post—Presentation of plaint.*—A petition sent by post is not a substitute for the presentation of a plaint as

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*continued.*

required by s. 50 of Madras Act VIII of 1865. Mopabti Pitchi Naidu *v.* Vuppala Kondamma [6 Mad., 136

2. ——— and s. 69—*Plaint—Amendment—Irregular procedure—Joint petition—Order to file separate plaints—Limitation.*—A landlord, having tendered pottahs to his raiyats which were not accepted by them, distrained, for rent due under the pottahs tendered, on the 10th of March [illegible]

Collector for orders, it was treated as a joint plaint [illegible]

[illegible] scretion of [illegible] ch, which [illegible] could be [illegible], and that the order of the Deputy Collector directing the petitioners to file separate suits was an amendment within the meaning of that section. *Held* also that by the provisions of s. 69, which provides that substantial justice shall not be defeated by want of form or irregularity in procedure, the said order, even if irregular, having done substantial justice, ought not to be set aside. Attipakula Munappa *v.* Dasinani Chenchu Nayudu . I. L. R., 7 Mad., 138

1. — [illegible] s. 51 and s. 18 [illegible]

[illegible] the Rent Recovery Act (Madras), 1865, were filed on the thirty-first day after the distraint complained of, the thirtieth day being a Sunday, and the Court closed. On objection being taken that the suits were barred under ss. 18 and 51 of the Act,—*Held* (1) that the suits were filed in time; (2) that the pro- [illegible]

Court itself, are entitled to do it at the first subsequent opportunity. Sambasiva Chari *v.* Ramasami Reddi . I. L. R., 22 Mad., 179

2. ——— *Presentation of plaint—Acceptance by Court of plaint sent by post.*—*K* sent a plaint by post to a revenue officer, who was on tour, and, in obedience to an order issued by such officer to pay batta within a certain date, presented himself and paid the amount demanded within thirty days from the date of the cause of action. *Held* that the suit was instituted within the time prescribed [illegible]

3. ——— *Suit to enforce acceptance of* [illegible]

s. 51. Easwara Doss *v.* Pungavanchari [I. L. R., 13 Mad., 361

——— ss. 57, 66—*Ex-parte decision.*—*Semble*—The terms of s. 57 of Act VIII of 1865 are wide enough to justify a Collector in treating as *ex-parte* a defendant not appearing on the day to which the hearing of the suit may have been adjourned under s. 66 of the Act. Subbramaniya Pillay *v.* Perumal Chetty . 4 Mad., 251

1. ——— s. 69—*Appeal, Computation of* [illegible]

[illegible] sen Saheb . . . . . [illegible] Mad., [illegible]

2. ——— and s. 18—*Deduction of time occupied in obtaining copy of judgment appealed against—Limitation Act (1877), s. 12.*—A tenant whose property had been distrained for arrears of rent sued under Rent Recovery Act, s. 18, by way of appeal against the distraint. The Revenue Court decided in his favour. The landlord preferred an appeal under s. 69 more than thirty days after the date when the decision was pronounced. He claimed that the time occupied in procuring a copy of the judgment appealed against [illegible]

limitation. Akkappa Nayanim *v.* Sithala Naidu [I. L. R., 20 Mad., 476

——— s. 72—*Refusal to execute muchalka—Suits for rent.*—By s. 72 of the Rent Recovery Act, when a judgment is given for the delivery of a muchalka, if the person required by the decree to execute such muchalka shall refuse to do so, the judgment shall be evidence of the amount of rent claimable from such person, or a copy of the judgment under the hand and seal of the Collector shall be of the same force and effect as a muchalka executed by the said person. A landholder, having tendered a pottah and obtained

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*concluded.*

confirmation of it by summary suit, sued for rent. The tenant in his written statement denied that the pottah was a proper one, and contended that he was not bound to accept it. *Held* that this amounted to a refusal to execute the muchalka, for the delivery of which judgment had been given, within the meaning of s 72, and that the requirements of that section had been complied with. VENKATARAMAYYA v. SUBBANNA . I. L. R., 23 Mad., 565

s. 76.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622 [I. L. R., 16 Mad., 451 I. L. R., 17 Mad., 298

s. 78.

See LIMITATION ACT, 1877, s 14. [I. L. R., 12 Mad., 467

See RIGHT OF SUIT—LANDLORD AND TENANT, SUITS CONCERNING. [I. L. R., 10 Mad., 368

———— *Limitation—Suit to recover property wrongfully distrained.*—The plaintiff sued to recover certain property wrongfully distrained by the defendant, who was his landlord, or in the alternative for its value. The defendant had tendered no pottah to the plaintiff, but the distraint had taken place professedly under the Rent Recovery Act. The suit was not brought within six months from the date of the wrongful distraint. *Held* that the suit was not barred under Rent Recovery Act, s. 78. GOUDAN v. RANGAYA GOUNDAN . I. L. R., 20 Mad., 449

MADRAS REVENUE RECOVERY ACT (MADRAS ACT II OF 1864).

See MADRAS ABKARI ACT, 1864, s. 10. [I. L. R., 7 Mad., 434

See CASES UNDER SALE FOR ARREARS OF REVENUE.

———— ss. 1, 2, 3, 38, 39—*Landholder*— [illegible]

[illegible]

to the purchaser at the revenue sale. ZAMORIN OF CALICUT v. SITARAMA . I. L. R., 7 Mad., 405

1. ———— s. 2—*Remedies of assignee from Government of land revenue—Land security for revenue.*—The land revenue payable on certain land having been assigned to a temple by Government, [illegible]

[illegible]

MADRAS REVENUE RECOVERY ACT (MADRAS ACT II OF 1864)—*continued.*

the land to sale to discharge arrears accrued due. KRISHNASAMI v. VENKATARAMA [I. L. R., 13 Mad., 319

2. ———— and ss. 25, 37—*Sale for arrears of revenue—Liability of all fields included in pottah.*—By accepting a raiyatwari pottah, the landholder pledges each and every field included therein as security for the whole assessment. Several fields separately assessed to revenue were held under one pottah by *K*. Default having been made by *K* in payment of revenue, one of such fields, of which *N* was the owner, was attached under the Revenue Recovery Act. *N* claimed to have it released from [illegible]

[illegible]

———— s. 11—*Attachment of gathered crops belonging to a tenant—Right of Government to distrain for arrears of revenue.*—Government can attach for arrears of revenue under s. 11 of Madras [illegible]

[illegible]

———— s. 36—*Extension of time by Government for payment of balance of purchase-money*—S 36 of Madras Act II of 1864 does not make it compulsory for Government to forfeit the money deposited by a bidder at a sale of land for arrears [illegible]

[illegible]

———— s. 38.

See BENAMI TRANSACTION—GENERAL CASES . I. L. R., 18 Mad., 469

1. ———— *Sale for arrears of revenue—Confirmation of sale after cancellation.*—When a [illegible]

[illegible]

2. ———— *Sale for arrears of revenue—Suit by purchaser for possession—Plea that it was a benami purchase.*—The purchaser at a sale held for arrears of revenue sued for possession of the land. It was pleaded that his purchase was made benami for the persons from whom the defendant derived title. *Held* that the Madras Revenue Recovery Act, s. 38, did not debar the defendant from raising this plea, and that, the averments on which it was based having been proved, the suit should be dismissed. SUBBARAYAR v. ASIRVATHA UPADESIAYYAR . . I. L. R., 20 Mad., 494

3. ———— and s. 39—*Suit to set aside alleged fraudulent sale—Limitation*—Non-compliance by the Collector with the directions of ss. 38

and 39 of the Revenue Recovery Act (Madras Act II of 1864) does not invalidate the title of the purchaser of land sold for arrears of revenue. KARUPPA v. VASUDEVA SASTRI . I. L. R., 6 Mad., 148

4. — — and s. 59—*Sale for arrears of revenue—Purchase by Government—Subsequent sale by Government—Suit by owner of a share in the mittah for cancellation of second sale—Limitation.*—The plaintiff was the owner of a share in a mittah which was sold on the 15th February 1886 for arrears of revenue and bought by Government, who, on the 16th June 1886, sold it to the first defendant, notifying the re-sale in the form prescribed under Madras Act II of 1864. The first

16th June 1886 was not a sale under s. 38 of Act II of 1864, although the notification of the sale was in the form prescribed by that Act, but a sale by Government of property that had become its own by reason of the purchase at the prior sale of 15th February; (2) that, even assuming the sale of the 16th June

———— ss. 41 and 42—*Sale for arrears of*

1.———— s. 52—*Karnam in a permanently-*

COLLECTOR OF NORTH ARCOT v. NAGI REDDI [I. L. R., 15 Mad., 35

2. ———— and s. 59—*Madras Hereditary Village Offices Act (Madras Act III of 1895), s. 21—Emoluments due to village officers—Demand for payment under s. 52 of Revenue Recovery Act—Payment under protest—Suit to recover amount paid—Legality of demand—Limitation.*—

MADRAS REVENUE RECOVERY ACT (MADRAS ACT II OF 1864)—continued.

By the custom of a zamindari its tenants brought their produce to the threshing-floor, where it was divided, *inter alia*, among the village servants. The lessees of the zamindari altered this system, directing the tenants to bring their produce direct to the granaries of the lessees, who promised to pay the village servants their fees from the said granaries. These fees having been only partly paid, the village servants complained to the Government revenue officials, who applied to the lessees for payment of the arrears, a demand for the same being ultimately issued under s. 52 of the Revenue Recovery Act (Madras), 1864. The lessees thereupon paid the amount of the arrears under protest, and a year later filed a suit against the Secretary of State to recover the money so paid *Held* that the lessees had made themselves liable for the fees, and the Collector was entitled

OF STATE FOR INDIA IN COUNCIL [I. L. R., 23 Mad., 571

1. ———— s. 59—*Limitation—Sale of land subject to mortgage—Suit by mortgagor.*—Land which was subject to a mortgage having been sold for arrears of revenue under Act II of 1864 (Madras),

Limitation Act, and that the suit was barred *Venkatapathi v. Subramaya, I. L. R., 9 Mad., 457*, explained. *Baij Nath Sahu v. Lala Sital Prasad, 2 B. L. R., F. B., 1*, and *Lala Mobaruk Lal v. Secretary of State for India, I. L. R., 11 Calc., 200*, considered. VENKATA v. CHENGADU . . I. L. R., 12 Mad., 168

3. ———— *Abkari notification referring to that Act—Sale to recover sum due from an*

MADRAS REVENUE RECOVERY ACT (MADRAS ACT II OF 1864)—*concluded.*

his bid was accepted. He sought to withdraw from the contract, but the sale to him was confirmed, and

occasioned to Government by the re-sale. In a suit, in 1888, to recover the house from the defendant who had purchased it and been placed in possession in June 1886,—*Held* that the suit was not barred

4. ——————— *Sale for arrears of revenue —Irregularity in sale—Want of due notification—*

Collector and the defaulter, but as between the Collector and the purchaser at the sale. *Venkata v.*

DARAN NAMBUDRI . I. L. R., 11 Mad., 100

MADRAS REVENUE RECOVERY AMENDMENT ACT (MADRAS ACT III OF 1884).

——————— s. 1, cl. 5.

See BENAMI TRANSACTION—GENERAL CASES . I. L. R., 18 Mad., 469

MADRAS SALT ACT (MADRAS ACT IV OF 1889).

——————— ss. 46 and 47.

See ESCAPE FROM CUSTODY. [I. L. R., 19 Mad., 310

MADRAS TOWN LAND REVENUE ACT (XII OF 1851) AND MADRAS ACT VI OF 1867.

——————— XII of 1851, ss. 1, 17—*Mad. Act VI of 1867, ss. 4, 31—Penal assessment of revenue—Jurisdiction of Civil Court—Limitation.*—The plaintiff was in occupation of certain land in Madras, and in May 1895 he received a

MADRAS TOWN LAND REVENUE ACT (XII OF 1851) AND MADRAS ACT VI OF 1867—*concluded.*

notice from the Collector stating that the land

to the Board of Revenue without success, paid under protest the penal assessment in various sums amounting together to R3,001-1-0. He now sued to recover that amount and prayed for a declaration of his title. *Held* by BODDAM, J., that the High Court had jurisdiction to entertain the suit in respect of the claim for money, but that the suit was barred as to so much of it as had been paid more than six months before the institution of the suit. *Held* by SHEPHARD, *Offg.* C.J., and MOORE, J. (affirming the judgment of BODDAM, J.), that the land belonged to Government and the plaintiff was in occupation without title, and that it was accordingly competent to Government to impose the assessment. In order to enable one having paid money under protest to recover money so paid, it is necessary for him to show that the payment was made under illegal coercion. MUTHAYYA CHETTI *v.* SECRETARY OF STATE FOR INDIA . . I. L. R., 22 Mad., 100

MADRAS TOWNS IMPROVEMENT ACT (MADRAS ACT III OF 1871).

See ESTOPPEL—ESTOPPEL BY CONDUCT. [I. L. R., 2 Mad., 104

See LIMITATION ACT, 1877, ART. 120 (1871, ART. 118) . I. L. R., 3 Mad., 124

——————— s. 9—*Power of Governor in Council to dismiss elected Municipal Commissioner.*—S. 9 of the Towns Improvement Act (Madras Act III of 1871) provides that the Governor in Council may remove an elected Municipal Commissioner for misconduct. In a suit for damages brought against the Secretary of State by a Municipal Commissioner for wrongful removal from office,—*Held* that the defendant not having proved misconduct, the plaintiff was entitled to damages. VIJAYA RAGAVA *v.* SECRETARY OF STATE FOR INDIA [I. L. R., 7 Mad., 466

——————— s. 38—*Tax due before approval of Government to Act—Illegal levy of tax—Omission to give notice.*—Plaintiff sued the Municipal Commissioners for the town of Bellary for a certain sum, alleged to have been illegally levied by them from him as his trade and profession tax. The sanction of the Governor in Council under s. 38 of Madras Act III of 1871, was obtained on the 4th

MADRAS TOWNS IMPROVEMENT ACT (MADRAS ACT III OF 1871) —*continued.*

July 1871, with authority to levy the tax from 1st May 1871. Plaintiff alleged that no notice under s. 61 of the Act had been served upon him, that the levying the tax was illegal, as the approval of Government was obtained three months after the commencement of the official year, and that the Act could not have retrospective effect. *Held* on a reference that the levy from the plaintiff was illegal. BATES *v.* MUNICIPAL COMMISSIONERS FOR THE TOWN OF BELLARY . . . 7 Mad., 249

———— s. 51—*Notice by owner of claim to remission of house-tax.*—The notice which an owner of property must give in order to entitle himself to a remission of the house-tax is an annual notice. PURUSHOTTAMA *v.* MUNICIPAL COUNCIL OF BELLARY . . . I. L. R., 14 Mad., 467

1. ———— s. 58—*Liability for carriage and horse-tax—Temporary residence—Payment of tax where person resides permanently.*—The defendant, a Judge of the Small Cause Court at Madura, visited Dindigal once a year and remained there for more than thirty days each year The defendant took

same horses and carriages,—*Held* that the defendant was not liable. SNAITH *v.* MCQUHAE 7 Mad., 332

2. ———— and ss. 59-62—*Liability to professional tax—Fiscal statutes—Construction of statutes.*—In construing enactments creating

payer. The duty of paying profession tax under s. 58, Madras Act III of 1871, is independent of the obligations of registration and taking out a certificate which precede it in the same section. *Per* HUTCHINS,

———— ss. 61, 62—*Maxim "Quod fieri non debet factum valet."*—The Vice-President of a Municipal Commission, purporting to act under the provisions of s. 61 of the Towns Improvement Act,

ciency of the notice of assessment was no answer to

MADRAS TOWNS IMPROVEMENT ACT (MADRAS ACT III OF 1871) —*continued.*

1. ———— s. 62—*"Person"—Joint trade—Tax.*—In s. 62 of the Madras Towns Improvement Act, 1871, the word "person" must be construed to include any company or association or body of persons, whether incorporated or not, where such construction is not repugnant to the context. Where, therefore, two undivided Hindu brothers carried on a joint trade in one shop and tax had been paid by one brother,—*Held* that no tax was payable by the other brother. MUNICIPAL COMMISSIONERS OF NEGAPATAM *v.* SADAYA . . I. L. R., 7 Mad., 74

2. ———— and s. 169—*Profession tax, Non-payment of—Offence, Nature of—Prosecution—Limitation.*—A complaint having been laid

v. NALLAPA . . .

———— s. 85—*Suit to recover money illegally levied as tax on profession.*—S. 85 of Madras Act III of 1871 is not a bar to a suit to recover money wrongfully levied as a tax because such so-called tax had no legal existence. *There is no* provision in that Act for levying any tax described in s. 57 of the Act at all otherwise than by the prescribing of the machinery for its levy in ss. 58-61. If that machinery is not applied, no liability to pay such tax can arise. Where the Municipal Commissioners of a town had not determined on the imposition of a tax of that description till 22nd April of the official year for which such tax was imposed, and the list of persons to be taxed for that year was not completed *till 14th July of the same year,* and notice to *A* of his assessment under such tax was not given him till 8th October in that year,—*Held* that the tax had no legal existence, and that *A* was entitled to recover from the Commissioners money which they had collected from him as and for such so-called tax. *Bates v. Municipal Commissioners for the Town of Bellary,* 7 *Mad.,* 249, followed. LEMAN *v.* DAMODARAYA . I. L. R., 1 Mad., 158

MADRAS TOWNS IMPROVEMENT ACT (MADRAS ACT III OF 1871) —*continued.*

——— ss 138, 139—*Street—Encroachment—Possession—Private property—Onus probandi.*—*H* owned a house in the town of A, to which the Towns Improvement Act, 1871, was extended in 1879. In 1882 the Municipal Commissioners, professing to act under s. 139 of the said Act, removed a pial which projected beyond the main walls of *H's* house and abutted on a lane which was used by the public. *H* proved that the pial had existed for fifty years *Held* that the action of the Municipal Commissioners was illegal. HANUMAYYA *v.* ROUPELL

[I. L. R., 8 Mad., 64

——— s. 154—*Omission to take out licenses—Criminal Procedure Code, 1869, ss 43, 66.*—S 154 of Madras Act III of 1871 was not intended to apply to omissions to take out licenses It applies to breaches of the Act which, in a policeman's view, are offences, and regarding which, if committed within his view, one of two courses is open to him,—*viz*, to arrest without warrant, or to lay an information before a Magistrate, and apply for a

[illegible]

made, and the Magistrate, *proprio motu*, institutes a prosecution. ANONYMOUS . 6 Mad., Ap., 50

——— s 165—*Penal clause sanctioned by Government with respect to other bye-laws, not* [illegible] *attached*—The

[illegible]

shall not be required, are in violation of the Act. ANONYMOUS . . . 8 Mad., Ap., 3

——— s. 168—*Suit on a contract against* [illegible]—*Notice*—A suit was

[illegible]

MAYANDI *v.* MCQUHAE . I. L. R., 2 Mad., 124

——— sch B, cl 4— "*Pleader and Practising Vakil*"—*Magistrate's Court Vakil.*—The words "Pleader and Practising Vakil" used in cl. 4, sch. B of the Madras Towns Improvement Act, 1871, are not restricted to persons who have obtained sanads from the District or High Court, but include all practitioners in Courts of criminal jurisdiction within the municipal limits. PALAMCOTTAH MUNICIPALITY *v.* ANNSAMI . I. L. R., 6 Mad., 100

MADRAS TOWNS IMPROVEMENT ACT (MADRAS ACT III OF 1871) —*concluded.*

——— sch. C—*Horse—Pony under thirteen hands.*—In the Madras Towns Improvement Act, 1871, the word "horse" includes a pony except when, by reference to the number of hands, the articles of sch. C show a contrary intention. Sch. C is part of the Act No tax is leviable under the Act on a four-wheeled carriage on springs drawn by one pony under thirteen hands. VIZAGAPATAM MUNICIPALITY *v.* WALKER . I. L. R., 5 Mad., 269

MADRAS TOWNS NUISANCES ACT (MADRAS ACT III OF 1889).

See BENCH OF MAGISTRATES.

[I. L. R., 18 Mad., 394

——— ss. 3, 6, and 7—*Common gaming-house*

[illegible]

PRESS *v.* JAGANNAYAKULU

[I. L. R., 18 Mad., 46

——— ss. 3 and 11.

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.

[I. L. R., 18 Mad., 490
I. L. R., 22 Mad., 238

MADRAS VILLAGE COURTS ACT (MADRAS ACT I OF 1889)

——— s. 13.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GENERAL CASES.

[I. L. R., 13 Mad., 145

——— proviso 3—"*Land*" *includes "house."*—In Madras Act I of 1889, s 13, proviso 3, the word "land" includes land covered by a house, and consequently a suit for house-rent, unless due under a written contract signed by the defendant, is not cognizable in a Village Munsif's Court. NARAYANAMMA *v.* KAMAKSHAMMA

[I. L. R., 20 Mad., 21

——— s. 73.

See MUNSIF, JURISDICTION OF.

[I. L. R., 21 Mad., 363

"MAFEE BIRT" TENURE.

See GRANT—CONSTRUCTION OF GRANTS.

[19 W. R., 211

MAGISTRATE.

See CASES UNDER BENCH OF MAGISTRATES.

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO.

MAGISTRATE—*continued.*

See CASES UNDER WARRANT OF ARREST,—CRIMINAL CASES.

——— Appearance of, to show cause.

See PRACTICE—CRIMINAL CASES—RULE TO SHOW CAUSE . I. L. R., 4 Calc., 20
[I. L. R., 25 Calc., 798

——— Attestation of—

See CASES UNDER EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED.

See CASES UNDER EXAMINATION OF ACCUSED PERSON.

——— Duty of—

1. ——— Duty in judicial capacity.—The necessity of a Magistrate acting in a dispassionate and impartial manner, and not in the spirit of a prosecutor, observed upon. IN THE MATTER OF MAHESH CHANDRA BANERJEE. QUEEN *v.* PURNA CHANDRA BANERJEE. QUEEN *v.* KALI SIRKAR
[4 B. L. R., Ap., 1: 13 W. R., Cr., 1

2. ——— *Acting on private knowledge of accused.*—A Magistrate acting judicially should not import into the case before him his previous knowledge of the character of the accused, but should determine his guilt or innocence upon the evidence given in the case. REG. *v.* VYANKATRAV SHRINIVAS . . . . 7 Bom., Cr., 50

See MEHEROONISSA *v.* BHASHAYE MADHA
[2 W. R., Act X, 29

LOPOTEE DOMNEE *v.* TIKHA MOODAI
[8 W. R., Cr., 67

3. ——— *Deciding on evidence when collected by police.*—Magistrates should clearly understand that, whilst the police perform their proper duty in collecting evidence, it is the function of the Magistrate alone to decide upon the sufficiency or credibility of such evidence when collected. GOVERNMENT *v.* KARIMDAD
[I. L. R., 6 Calc., 496: 7 C. L. R., 467

4. ——— *Commitment of accused for trial.*—The duty of a committing Magistrate is to ascertain whether by the evidence for the prosecution a *primâ facie* case is made out against an accused. QUEEN *v.* MAHA SINGH . 3 N. W., 27

QUEEN *v.* KISHTO DOBA . 14 W. R. Cr., 16

5. ——— *Re-trial—Record of former trial.*—A Magistrate trying a case is as much bound by strict rules of evidence as any Sessions Judge or Civil Court. Where proceedings, which had already been taken against the accused before another Magistrate, had been quashed, and a new trial directed, the Magistrate holding the second trial is not justified in referring to the former record as a whole, but only to such portions of it as have been specially put in evidence before him. IN THE MATTER OF DEVI DUTT . . 7 C. L. R., 193

6. ——— *Trial by Magistrate who as Collector instituted proceedings.*—The District Magistrate should not himself try a case in which he instituted the prosecution as Collector. QUEEN *v.* NADI CHAND PODDAR . 24 W. R., Cr., 1

7. ——— *Conviction by Ma-*

ficate. IN THE MATTER OF RAMDYAL SINGH
[5 B. L. R., Ap., 89

See QUEEN *v.* HIRALAL DAS
[8 B. L. R., F. B., 423

S. C. GOVERNMENT OF BENGAL *v.* HIRALAL DAS
[17 W. R., Cr., 39

8. ——— *Conviction of public servant—Sentence.*—Where the person in the employment of the Court is convicted of a criminal offence punishable by fine or imprisonment, it is quite competent to the Magistrate in his administrative capacity to dismiss him from his office. QUEEN *v.* CHUNDER COOMAR SEN
[1 Ind. Jur., N. S., 97: 5 W. R., Cr., 4

9. ——— *Judge—Bias—Magistrate's jurisdiction where complainant is his private servant—Legality of conviction and sentence*

The
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Magistrate. IN RE THE PETITION OF BASAPA
[I. L. R., 9 Bom., 172

10. ——— *Translations of findings, Record of.*—Magistrates are bound to record translations of their findings in criminal cases. REG. *v.* KATUNJI BHUKAN . . 1 Bom., 17

11. ——— *Comments on evi-*

[5 Bom., Cr., 15

12. ——— *Witness—Threatening witness.*—In cross-examination before the Court of Session a witness stated that, when she was before the committing Magistrate, that officer, addressing her, said: "Recollect, or I will send you into custody." *Held* that, if the Magistrate did so address the witness, he exceeded his duty. QUEEN-EMPRESS *v.* ISHRI SINGH . I. L. R., 8 All., 672

MAGISTRATE—*continued.*

13. —— [illegible] —— *High Court call-* [illegible]

DOSS *v.* MANOOK . . . 2 C W N., 572

—— Examination of, as witness.

See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER I. L. R., 21 Calc., 920

———— Liability of.

See CASES UNDER JUDICIAL OFFICERS, LIABILITY OF

(of Native State)

See CONFESSION—CONFESSIONS TO MAGISTRATE . I. L. R., 22 Bom., 235

———— Power of.

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—COSTS.

See RAILWAYS ACT, s. 1'3.
[I. L. R., 18 Bom., 440
I. L. R., 20 Mad., 385

See CASES UNDER REFERENCE TO HIGH COURT—CRIMINAL CASES.

See CASES UNDER SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.

See CASES UNDER BENCH OF MAGISTRATES.

See CASES UNDER CANTONMENT MAGISTRATE

See CASES UNDER COMPLAINT.

See CRIMINAL PROCEDURE CODES, ss. 436, 438 (1872, ss. 296, 297).
[I. L. R., 4 Calc., 16, 647
I. L. R., 9 Bom., 100
2 B. L. R., S. N., 2: 10 W. R., Cr., 35

See CASES UNDER JURISDICTION OF CRIMINAL COURT.

See CASES UNDER NUISANCE.

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO.

See PROSTITUTE . 3 B. L. R., A. Cr., 70
[I. L. R., 6 Calc., 183

See CASES UNDER RECOGNIZANCE TO KEEP PEACE

See CASES UNDER REFORMATORY SCHOOLS ACT.

1. APPEARANCE OF JURISDICTION ON PROCEEDINGS.

———— Magistrate with power to do particular act or make particular order—*Order for maintenance under s. 536, Criminal Procedure Code.*—Where the law empowers Magistrates

MAGISTRATE—*continued.*

1. APPEARANCE OF JURISDICTION ON PROCEEDINGS—*concluded.*

of a particular grade to do a particular act or make

[22 W. R., Cr., 50

2. GENERAL JURISDICTION.

1. ——— "Magistrate," Meaning of—*Jurisdiction of—Criminal Procedure Code, 1861, s. 149—Meaning of "Magistrate."*—The words "a Magistrate" in s. 149 of the Code of Criminal Procedure mean "any Magistrate," and not merely "the Magistrate having jurisdiction." REG. v. VAHALA JETHA . . . . . 7 Bom., Cr., 56

2. ——— "Magistrate"—*Criminal Procedure Code, 1861, s. 15—Head of the village.*—The head of a village is within the definition of a Magistrate as defined in s. 15 of the Criminal Procedure Code. ANONYMOUS . 4 Mad., Ap., 2

3. ——— "Magistrate of District," Meaning of—*Criminal Procedure Code, 1861, s. 61.*—Meaning of the words "Magistrate of the District" in s. 61 of the Criminal Procedure Code. ANONYMOUS . . . . 3 Mad., Ap., 29

means the Magistrate of the particular district in which the person resides, against whom such a complaint is made. IN RE THE PETITION OF FAKRUDIN

[I. L. R., 9 Bom., 40

5. ——— *Criminal Procedure Code (Act X of 1882), s. 488—Complaint by a wife against her husband for maintenance.*—A complaint under s. 488 of the Criminal Procedure Code (Act X of 1882) falls within the cognizance of the Magistrate competent to entertain such complaint, and within the local limits of whose jurisdiction the husband or the father is actually residing at the date of such complaint. IN RE THE PETITION OF FAKRUDIN . . . I. L. R., 9 Bom., 40

6. ——— Head Assistant Magistrate—*Power of Magistrate to order trial of cases of offences committed in town outside his division.*—An objection was taken before the Sessions Judge in the hearing of an appeal that the Head Assistant Magistrate had no jurisdiction to try the case, he having a distinct local jurisdiction which did not include the town where the offence was committed. It appeared that the Head Assistant Magistrate had received general instructions from the Magistrate of the district, as a temporary arrangement, to take up criminal cases arising within the limits of the said

MAGISTRATE—*continued.*

2. GENERAL JURISDICTION—*continued.*

town, which was not within his division. *Held*, upon these facts, that the Head Assistant Magistrate had no jurisdiction. ANONYMOUS . 6 Mad., Ap., 43

7. ——— Village Magistrate—*Power to issue summons.*—A Village Magistrate has authority to issue a summons to persons within, but not without, the local area of his jurisdiction, whose attendance may be required in cases which he is empowered to try. QUEEN v. KRISHNAMA

[I. L. R., 5 Mad., 230

8. ——— Magistrate also Justice of Peace—*53 Geo. III, c. 155, s. 105—Act VII of*

9. ——— Trial by District Magistrate for breach of orders of a Reserve Inspector of Police—*Criminal Procedure Code (Act V of 1898), s 556, (Act X of 1882), s. 555—Police Act (V of 1861), s. 29—Magistrate not "personally interested."*—*Held* that the Magistrate of a district was not, on account of his being the head of the police of the district, debarred by reason of s. 556 of the Code of Criminal Procedure from trying a person accused under s. 29 of the Police Act, 1861, of a breach of the orders of a Reserve Inspector of Police. QUEEN-EMPRESS v. NARAIN SINGH

[I. L. R., 22 All., 340

10. ——— Meaning of the term "personally interested"—*Criminal Procedure Code, s. 555—Opium Act (I of 1878), s. 9—Jurisdiction of officer in charge of excise and opium administration of a district to try cases under the Opium Act.*—A Magistrate in charge of the excise and opium administration of a district is not "personally interested" in the observance of the provisions of Act I of 1878. He is therefore not precluded from exercising jurisdiction in respect of offences against the above-mentioned Act. IN THE MATTER OF THE PETITION OF GANESHI . I. L. R., 15 All., 193

11. ——— Disqualification of Magistrate or Judge—*Summary procedure—Bias of Magistrate—Chairman of Municipality trying cases as Magistrate—Criminal Procedure Code, ss. 260, 262, 263, 555—Obstruction in public road.*—

inhabitant of the town, who admitted that he had raised the level of a road within the limits of the Municipality which was considered by the Magistrate to amount to the offence of causing an obstruction in a public way. *Held* the Magistrate's procedure was illegal, and the conviction should be set aside. QUEEN-EMPRESS v. ERUGADU

[I. L. R., 15 Mad., 83

MAGISTRATE—*continued.*

2. GENERAL JURISDICTION—*continued.*

12. ——— Disqualification of Magistrate to try a case in which he is personally interested—*Criminal Procedure Code (Act X of 1882), s. 555—Statements made out of Court.*—The accused was convicted of reckless and furious

13. ——— Disqualifying interest of Magistrate—*Criminal proceedings—Irregularity—"Personally interested"—Criminal Procedure Code, 1882, s. 555*—Where a District Magistrate, as prosecutor, initiated and directed the proceedings against certain accused persons who were charged by him with having committed offences

14. ——— Disqualification of Magistrate or Judge—*Personal interest—Criminal Procedure Code (1882), s. 555—Bombay District Municipal Act (VI of 1873), s. 84—Municipal offence.*—The mere fact that a Magistrate is the Vice-President of a District Municipality and Chairman of the Managing Committee does not disqualify him from trying a charge of an offence brought by the Municipality under Bombay Act VI of 1873; but if he has taken any part in promoting the prosecution, as, for instance, by concurring in sanctioning it at a meeting of the managing committee or otherwise, he will be disqualified by reason of the existence of a personal interest, over and above what may be supposed to be felt by every Municipal Commissioner in the affairs of the Municipality. QUEEN-EMPRESS *v.* PHEROZSHA PESTONJI **I. L. R., 18 Bom., 442**

15. ——— Disqualification of Magistrate—*Criminal Procedure Code (1882), s. 555—Personal interest.*—The accused was a compounder in the employ of Treacher & Co. He was tried and convicted by the Presidency Magistrate of criminal breach of trust as a servant in respect of certain

interest. IN RE RODRIGUES
[I. L. R., 20 Bom., 502

16. ——— Incompetence of Magistrate who is Chairman of Municipality to try municipal cases—*Criminal Procedure Code (1882), ss. 526 and 555—"Any case," Meaning of—Prosecution under Bengal Municipal Act (Ben. Act III of 1884)—Grounds for transfer of case.*—An appeal against a conviction under s. 217, cl. 5, of the Bengal Municipal Act (Bengal Act III of 1884) was preferred to the District Magistrate, who was also Chairman of the Municipality. On an application to the High Court for a transfer to the Court of some other Magistrate,—*Held* that, apart from the question whether there was a disqualification under s. 555 of the Criminal Procedure Code, the case was one which it was expedient should be transferred to another Court. *Per* BANERJEE, *J.*—S. 555 of the Criminal Procedure Code renders a Magistrate incompetent to try a municipal case if he is the Chairman of the Municipality. The words "try any case" in that section are comprehensive enough to include the hearing of an appeal. NISTARINI DEBI *v.* GHOSE
[I. L. R., 23 Calc., 44

17. ——— Disqualifying interest of Magistrate—*Criminal Procedure Code (1882), ss. 537 and 555—Investigations preliminary to a trial—"Personally interested"—Court of competent jurisdiction."*—Where investigations of the police preliminary to a trial are directed to a very considerable degree by a Magistrate, such Magistrate is personally interested in the case, and is disqualified from trying it by the provisions of s. 555 of

MAGISTRATE—*continued.*

2 GENERAL JURISDICTION—*continued.*

such a personal disqualification, is forbidden by law to try a particular case, though he may be authorized generally to try cases of the same class, cannot be said, with respect to that case, to be a Court of competent jurisdiction, and his orders are not covered by the saving provisions of s. 537. SUDHAMA UPADHYA *v.* QUEEN-EMPRESS I. L. R., 23 Calc., 328

18. ———— Magistrate personally interested—*Criminal Procedure Code (1882), s. 555—Magistrate giving evidence before himself.*—Where a Magistrate, in whose Court a complaint of rioting and mischief had been filed, made a personal inspection of the *locus in quo*,—*Held* that by so doing he had made himself a witness in the case, and had thereby rendered himself incompetent to try it. *Held* further that, where a Judge is the sole Judge of law and fact in a case tried before himself, he cannot give evidence before himself or import matters into his judgment not stated on oath before the Court in the presence of the accused. QUEEN-EMPRESS *v.* MANIKAM I. L. R., 19 Mad., 263

19. ———— Disqualification of Magistrate to try case—*Criminal Procedure Code (1882), ss. 202, 540, and 555—Examination of witnesses.*—Where a Magistrate before whom a complaint was made held an inquiry under s. 202 of the [illegible]

and, after a short adjournment, examined a witness called by himself, and found the accused guilty under s. 341 of the Penal Code,—*Held* that there [illegible]

inasmuch as the Magistrate had not initiated or [illegible]

taken. IN THE MATTER OF ANANDA CHUNDER SINGH *v.* BASU MUDH I. L. R., 24 Calc., 167

20. ———— Magistrate expressing opinion in a report after local investigation, Competency of, to hold the trial— [illegible]

holding the trial on an order by the District Magistrate making over the case to him for that purpose. *Ananda Chunder Singh v. Basu Mudh, I. L. R., 24 Calc., 167,* referred to. BANI MADHEB ROY *v.* ROSARAJ GOSSAMI . . 4 C. W. N., 604

MAGISTRATE—*continued.*

2. GENERAL JURISDICTION—*concluded.*

21. ———— Disqualification of Magistrate to try case—*Witness—Omission to record statement of accused under Code of Criminal Procedure (1882), s. 364.*—Where a Magistrate before whom an accused person is brought omits to record, as provided by s. 364 of the Criminal Procedure Code, statements made by the accused, he does not thereby make himself a witness, and so become disqualified from trying the case. QUEEN-EMPRESS *v.* FATTAH CHAND . I. L. R., 24 Calc., 499

FATEH CHAND *v.* DURGA PROSAD [1 C. W. N., 435

22. ———— Disqualification of Magistrate—*Magistrate holding local investigation—* [illegible]

MATTER OF THE PETITION OF LALJI [I. L. R., 19 All., 302

23. ———— Magistrate becoming witness, Competence of, to try case—*Local inspection by Magistrate trying case—Information not obtained from inspection.*—Where a Magistrate visited the scene of occurrence of the alleged offence and not merely noted the various features thereof of importance to a proper decision of the case, both parties being present on the occasion, but obtained information outside the scope of such inspection as regards the presence of the accused and based his judgment thereon,—*Held* that the Magistrate had thus made himself a witness, and could not try the case; and that he should be examined as a witness at the re-trial. SATRI DULALI *v.* EMPRESS [3 C. W. N., 607

3. TRANSFER OF MAGISTRATE DURING TRIAL.

[illegible]

of Seebsaugor, "with first-class powers and powers [illegible]

MAGISTRATE—*continued.*

3. TRANSFER OF MAGISTRATE DURING TRIAL—*continued.*

Mr. C to Kamroop, after his return from furlough, was a transfer from Seebsaugor within the meaning of s. 56 of Act X of 1872. IN THE MATTER OF PURSOORAM BOROOA

[I. L. R., 2 Calc., 117 : 25 W. R., Cr., 52

25. ——— **Jurisdiction to complete trial**—*Transfer of Magistrate while trying a case*—Mr. *M* was appointed by the Local Government, under s. 37 of Act X of 1872, a Magistrate of the first class, under the designation of Joint Magistrate, in the district of Meerut. He was subsequently appointed to officiate as Magistrate of the district of Meerut during the absence of Mr *F* or until further orders While so officiating, he was appointed by a Government notification, dated the 10th July 1880, to officiate as Magistrate and Collector of Gorakhpur, "on being relieved by Mr. *F*." He was relieved by Mr. *F* in the forenoon of the 23rd July 1880, and in the afternoon of that day, under the verbal order of Mr. *F*, he proceeded to complete a criminal case which he had commenced to try while officiating as Magistrate of the district of Meerut.

a Magistrate of the first class; and that therefore the conviction of such accused persons had been properly quashed on the ground that Mr. *M* had no jurisdiction. EMPRESS OF INDIA *v.* ANAND SARUP

[I. L. R., 3 All., 563

26. ——— **Order passed by a Magistrate after his successor had entered upon**

MAGISTRATE—*continued.*

3. TRANSFER OF MAGISTRATE DURING TRIAL—*continued.*

27. ——— **Change of powers of Magistrate while case is proceeding**—*Notification taking effect retrospectively.*—On the 22nd of May 1878 a Deputy Magistrate, invested with third class powers only, sentenced an accused person to three months' imprisonment under s 417 of the Penal Code, thus exercising second class powers. On appeal the Magistrate, on the 18th June, annulled the sentence and directed a new trial under s 284 of the

28. ——— **Appointment of Magistrate**

been so invested with full powers was not communicated to him until the 23rd idem. The accused

before the conviction. *Quære*—Whether an order

WARI *v.* MOHAMED ESHAK

[I. L. R., 6 Calc., 476

See EMPRESS OF INDIA *v.* ANAND SARUP

[I. L. R., 3 All., 563

29. ——— **Transfer of a Sub-Registrar invested with powers of a Special Magistrate**—*Criminal Procedure Code, s 40—Madras Police Act (XXIV of 1859), s. 48.*—A

cases of offences under that Act. The District Magistrate having reported the cases for the orders of the High Court, the Court declined to quash his proceedings. QUEEN-EMPRESS *v.* VIRANNA

[I. L. R., 15 Mad., 132

MAGISTRATE—*continued.*

3. TRANSFER OF MAGISTRATE DURING TRIAL—*concluded.*

30. ———— Head Assistant Magistrate appointed Deputy Magistrate in same district—*Criminal Procedure Code (1882), s. 350—Part-heard case.*—A Head Assistant Magistrate, during the pendency of a criminal case of which the trial was almost finished, was appointed to the office of Deputy Magistrate in another part of the same district. The case was transferred by an order of the District Magistrate to the file of the Deputy Magistrate. *Held* that the Deputy Magistrate could proceed with the trial from the point at which he had arrived as Head Assistant Magistarte. QUEEN-EMPRESS *v.* AHOBALAMATAM JEER

[I. L. R., 22 Mad., 47

4. POWERS OF MAGISTRATES.

31. ———— Magistrate of first class—*Sentence—Appellate Court—Enhancement of punishment.*—As an Appellate Court, a first class Magistrate has power to pass any sentence which a Subordinate Magistrate might have passed. ANONYMOUS CASE . . . . . I. L. R., 1 Mad., 54

32. ———— Magistrate of second class—*Criminal Procedure Code, 1882, s. 206, and sch. III, arts. II, III (7)—Power to commit for trial—Case triable by Court of Session and Magistrate of the first class—Discharge of accused.*—A complaint of an offence made punishable by s. 392 of the Penal Code was brought in the Court of a Magistrate of the second class, who had been invested with the powers described in s. 206 of the Criminal Procedure Code The Magistrate passed an order directing that the enquiry should be held in his Court, and accordingly an inquiry was held under the provisions of Ch XVIII of the Criminal Procedure Code, and the accused was discharged. *Held* that powers conferred under s 206 of the Criminal Procedure Code convey authority to carry into effect any of the provisions of Ch XVIII of the Code; that the procedure to be adopted under Ch. XVIII is not confined to cases exclusively triable by a Court of Session, [illegible]
opinion [illegible]
by such [illegible]
present case directing enquiry to be held in his Court, must be taken to mean that, in his opinion, the [illegible]

33. ———— Penal Code, s. 71—*Criminal Procedure Code, ss. 39, 235—Rioting, grievous hurt, and hurt—Punishment for more than one of several offences—Powers of Magistrate of first class conferred on Magistrate of second class during trial—Power to sentence as first class Magistrate.*—On the 8th August 1884 a Magistrate of the second class began an enquiry in a case in which several persons were accused of rioting and of voluntarily causing grievous hurt. On the 6th September the powers of a Magistrate of the first class

MAGISTRATE—*continued.*

4. POWERS OF MAGISTRATES—*continued.*

were conferred on the Magistrate by an order of Government, which was communicated to him on the 8th September. On the 9th September, the case for the prosecution having closed, the Magistrate framed charges against each of the accused under ss. 323 and 325 of the Penal Code, recorded the statements [illegible]

MO [illegible]
ter [illegible]
Ma [illegible]
as [illegible]
the passing of sentence, and who, prior to [illegible] sentence, has been invested with the powers of a Magistrate of the first class, is competent to pass [illegible] in the case as a Magistrate of the first class. [illegible]

sentence as a Magistrate of the first class. [illegible] BRODHURST, *J.*, that the sentences passed by the [illegible] as a whole illegal; that if he had [illegible] Code, [illegible] been [illegible]

[I. L. R., 7 All., 414

34. ———— Power to send boy to Reformatory School—*Criminal Procedure Code, s. 399—Reformatory Schools Act, 1876, ss. 2, 7.*—The Reformatory Schools Act, 1876, provides only for male juvenile offenders being sent to reformatory [illegible] of the first class and s. 399 [illegible]
Magistrate directed a boy to be sent to a reformatory under s 399 of the Code of Criminal Procedure, that the order was illegal. QUEEN-EMPRESS *v.* MADASAMI . . . . I. L. R., 12 Mad., 94

35. ———— Joint Magistrate with powers of Magistrate of district—*Criminal Procedure Code, 1861, ss. 15, 23, and 6.*—A Joint Magistrate who has been vested with the full powers of a Magistrate of a district, and to whom a case

MAGISTRATE—*continued.*

4. POWERS OF MAGISTRATES—*continued.*

in the original complaint. IN THE MATTER OF THE PETITION OF LUCHMIPUT SINGH 18 W. R., Cr., 43

(a) of the Code of Criminal Procedure, 1861 (as amended by Act VIII of 1869), has no jurisdiction to try a case on the report of a police officer or on a complaint directly preferred to him IN THE MATTER OF THE PETITION OF SHANKAR ABAJI HOSHING

[6 Bom., Cr., 69

37. ———— Magistrate of third class—*Power to entertain charge in police report—Criminal Procedure Code, 1872, s. 123*—A Magistrate of the third class can try a person accused of a cognizable offence, who has been forwarded to him by an officer in charge of a police station, under s. 123 of the Code of Criminal Procedure. REG. v. LALA SHAMBHU . . . . . . 10 Bom., 70

38. ———— Deputy Magistrate—*Default*

TAJUMADDI LAHORY

[1 B. L. R., A. Cr., 1; 10 W. R., Cr., 4

39. ———— Power of delegation of authority to receive complaints—*Criminal*

40. ———— Power to refer case where no jurisdiction to try it—*Power to try case without complaint.*—A Subordinate Magistrate has

41. ———— Power to refer case sent for investigation by Civil Court—*Power to try*

MAGISTRATE—*continued.*

4. POWERS OF MAGISTRATES—*continued.*

43 ———— Order for dismissal of complaint—*Discharge of accused—Code of Criminal Procedure, Act X of 1882, ss. 253, 259*—A Magistrate is not competent to pass an order of dismissal or discharge in consequence of the absence of the com-

44. ———— Removal of case from file of Deputy Magistrate—*Criminal Procedure Code (Act XXV of 1861), s. 66—Act VIII of 1869, s. 39—Discretion of Court.*—Interference by

[6 B. L. R., Ap., 45

45. ———— Power to refer to Subordinate Magistrate.—A full power Magistrate has no authority to refer for disposal to a Subordinate Magistrate a complaint made originally to such full-power Magistrate. REG. v. PAPILIO MUTHIO

[9 Bom., 167

46. ———— Reference to District Magistrate—*Powers of second class Magistrate—Commitment to Court of Session—Criminal Procedure Code, 1882, s. 349*—An Assistant Magistrate convicted a person under ss. 406 and 417 of the Penal Code, and referred the case to the District Magistrate

the Assistant Magistrate had no jurisdiction to deal

MAGISTRATE—*continued.*

4. POWERS OF MAGISTRATES—*continued.*

[I. L. R., 13 Calc., 305

47. ———— *Criminal Procedure Code Amendment Act (III of 1884), s 8 (6)—European British subject—Trial by District Magistrate with a jury—Procedure in a "trial by*

Amendment Act) is to confer upon the District Magistrate precisely the same authority as the Sessions Judge has, under s. 307 of the Criminal Procedure

pronounce their verdict, but refers generally to cases triable with a jury as contradistinguished from cases tried with the help of assessors or in any other manner mentioned in the Criminal Procedure Code. QUEEN-EMPRESS *v.* MCCARTHY I. L. R., 9 All., 420

48. ———— **Magistrates not Justices of the Peace**—*Madras Boat Rules—Act IV of 1842—Act IX of 1846—Liability of owner under rule 7—Burden of proof.*—Under Act IX of 1846, the Madras Government is authorized to make, in respect of ports in the presidency, such regulations for the management of boats and such other matters as are provided for by Act IV of 1842 in respect of the Madras roads, being similar in principle to the provisions of the said Act, but varying in detail as local circumstances may require. Act IV of 1842, s. 21, empowers a Justice of the Peace of the town of Madras to hear and determine all pecuniary forfeiture and penalties had or incurred under or against that Act. *Held* that it was competent to the Government of Madras to provide that cases cognizable under the rules passed in accordance with Act IX of 1846 should be heard and determined by Magistrates not being Justices of the Peace. IN RE ROUTHAKOVNI

[I. L. R., 9 Mad., 431

49. ———— **Reference to first class Magistrate**—*Criminal Procedure Code, 1882, s 349.*—A second class Magistrate having convicted a person of theft and sent him to a first class Magistrate for enhanced punishment as an old offender, under s. 349 of the Code of Criminal Procedure, the first class

s. 349 of the Code of Criminal Procedure, the Court to which the case is referred should dispose of the case itself and not send it back to the Court by which the reference is made for committal to the Sessions. QUEEN-EMPRESS *v.* VIRANNA

[I. L. R., 9 Mad., 377

MAGISTRATE—*continued.*

4. POWERS OF MAGISTRATES—*continued.*

50. ———— **Return by Subdivisional Magistrate of case referred to him**—*Criminal*

second class Magistrate) was empowered to inflict. The Subdivisional Magistrate, instead of disposing of the case himself, returned it to the second class Magistrate for committal, and thereupon the latter committed it *Held* that the action of the Subdivisional Magistrate, in returning the case to the second class Magistrate, was illegal, as he was bound to pass a final judgment, sentence or order. His

directed to

EMPRESS *v.*

Bom., 196

51. ———— **Deputy Magistrate in charge of District Magistrate's office**—*Criminal Procedure Code, 1882, s. 437.*—A Deputy

52. ———— **Reference to Deputy Magistrate**

53. ———— **Reference to District Magistrate by Civil Court for enquiry**—*Power to refer it to Deputy Magistrate.*—A District Magis-

RAM . 2 N. W., 21

QUEEN *v.* ASSUP ALI KHAN . 3 N. W., 126

54. ———— **Power to transfer case sent for inquiry**—*Reference by Civil Court—Order*

the case to the Sessions. *Held* that the order of commitment was bad. S. 274 of the Code of Criminal Procedure is inapplicable to a case referred to a Magistrate under s. 171. ANONYMOUS

[6 Mad., Ap., 41

MAGISTRATE—*continued.*

4. POWERS OF MAGISTRATES—*continued.*

55. ——— **Reference by District Magistrate to Subordinate Magistrate**—*Criminal Procedure Code, 1861, Ch. XIX.*—The Magistrate of a district or division is authorized, under s 273 of the Criminal Procedure Code, to transfer proceedings under Ch. XIX of that Code to his subordinates. QUEEN *v.* ABDOOLLAH . 2 N. W., 401

56. ——— **Reference to full-power Magistrate**—*Subordinate Magistrate—Criminal Procedure Code, 1861, Ch. XII*—*Held* that the Magistrate of a district before whom a criminal case is brought, either on complaint preferred directly to such Magistrate or on the report of a police officer,

Code, A full- to the dinate of the liately "subordinate" to the District Magistrate within the meaning of s. 434 of the same Code. REG. *v.* KRISHNA PARASHRAM . . 5 Bom., Cr., 69

57. ——— **Power to refer cases for inquiry**—*Criminal Procedure Code, 1861, s. 273.*—Under s 273 of the Criminal Procedure Code, a full-power Magistrate may refer for enquiry to a

Session or the High Court. ANONYMOUS [2 Mad., Ap, 40

58. ——— *Criminal Pro-* 273 of the Cri-

merely authorizes him to take cognizance of offences without complaint and to issue summons or warrant. ANONYMOUS . . . . 7 Mad., Ap, 2

59. ——— *Criminal Procedure Code, 1861, s. 273—Criminal Procedure Code, 1869, s. 23 (g)—Power to refer cases to other Magistrates.*—S. 23 (g) of the Code of Criminal Procedure, 1869, makes the Magistrate of a district competent to refer cases under s. 273 of the Code to a Divisional Magistrate exercising full powers. ANONYMOUS . . . . . . 7 Mad, Ap., 5

60. ——— *Criminal Procedure Code (Act XXV of 1861), s. 273—Grievous hurt.*—A Magistrate has no power, under s 273 of the Code of Criminal Procedure, to refer a case of grievous hurt for trial to a Deputy Magistrate having only the power of a Subordinate Magistrate of the second class. GABIND CHANDRA BISWAS *v.* HEM CHANDRA BAREER . . 6 B. L. R., Ap., 115

MAGISTRATE—*continued.*

4 POWERS OF MAGISTRATES—*continued.*

61. ——— *Reference of case*

62. ——— *Criminal Procedure Code, 1872, s. 45*—Pending inquiry into a charge of house-breaking, the second class Magistrate of B Division was transferred to A Division.

be committed to the Sessions by the second class Magistrate if there was sufficient evidence. The second class Magistrate accordingly committed the case to the Sessions. *Held* that the order of the District Magistrate was illegal QUEEN *v.* ADAPA VENKANNA . . . I. L. R., 4 Mad., 327

63. ——— **Power of District Magistrate to refer case referred to him for trial**—*Reference to full-power Magistrate—Criminal*

64. ——— *Power of, to pass orders in cases before subordinate Court without transfer to his own Court—Judicial enquiry before issue of process, legality of—Code of Criminal*

65. ——— *Code of Criminal Procedure (Act V of 1898), ss. 192, cls. (1) and (2), 529 (f), 145—Transfer, Order of, made by a Magistrate not empowered by law in that

MAGISTRATE—*continued.*

4. POWERS OF MAGISTRATES—*continued.*

behalf and proceedings taken under such transfer whether void.—A Magistrate of the first class, not being a District Magistrate or a Subdivisional Magistrate, passed an order under s 145 (*1*), Code of Criminal Procedure, and transferred the case to another Magistrate, and proceedings having been taken by the latter, the same was sought to be set aside as being without jurisdiction. *Held* that, although such transfer is not authorized by s. 192 (2) of the Code of Criminal Procedure, still the proceedings taken upon such transfer may be considered saved under the term of s. 529, cl (*f*), of the Code. Under the terms of s. 192 (*2*), a Magistrate of the first class, even when duly empowered to transfer cases, can only transfer an enquiry or trial relating to an offence. *Queen-Empress* v. *Chidda, I. L. R., 20 All., 40,* explained and distinguished. AKBAR ALI KHAN *v.* DOMI LAL

[4 C. W. N., 821

66. ———— *Reference of case for trial of offence by subordinate Court—Power*

trate,—*Held* that, so long as the case connected with that offence remained with the Subordinate Magistrate, no other Magistrate was competent to deal with it, and that applications for warrants against other persons concerned in that offence should be made to the Magistrate before whom the case was and to no other Magistrate. GOLAPDY SHEIKH *v.* QUEEN-EMPRESS . . . . I. L. R, 27 Calc., 979

IN THE MATTER OF GOLABDY SHEIKH

[4 C. W. N., 827

67. ———— *Criminal Procedure Code, 1882, ss 155, 202, and 203—Magistrate's*

power or authority on Magistrates to direct a local investigation by the police, or call for a police report. It is not a proper course for a Magistrate, when a complaint is made before him of an offence of which he can take cognizance, to refer the complaint to a police officer. He is bound to receive the complaint, and after examining the complainant to proceed according to law. IN RE JANKIDAS GURU SITARAM

[I. L. R., 12 Bom., 161

68. ———— *District Magis-*

MAGISTRATE—*continued.*

4. POWERS OF MAGISTRATES—*continued.*

69. ———— *Penal Code, s. 228—Insulting a Magistrate—Criminal Procedure Code, s. 195.*—The accused intentionally insulted a Village Munsif in the discharge of his magisterial duties: the Village Munsif did not prefer a complaint or sanction a prosecution, but a second class Magistrate charged the accused under Penal Code, s 228, on a police report and convicted him. *Held* that the second class Magistrate was competent to try the complaint, and the conviction was right. QUEEN-EMPRESS *v.* VENKATASAMI

[I. L. R., 15 Mad., 131

70. ———— *Criminal Procedure Code, s. 191—Magistrate taking cognizance of an offence on his own personal knowledge—Right of accused to have the case transferred.*—Where a Magistrate was found to have taken cognizance of an offence under cl. (*c*) of s. 191 of the Code of Criminal Procedure,—*Held* that he had no power, on an application being made under the last clause of the section abovenamed, to refuse to transfer the case. QUEEN-EMPRESS *v.* HAWTHORNE

[I. L. R., 13 All., 345

71. ———— *Criminal Procedure Code (Act X of 1882), s. 191 (c); (Act V of 1898), ss. 190, 191—Transfer of case or commitment to Sessions Court.*—A Magistrate, when a valid objection is taken under Criminal Procedure Code, s. 191, that he cannot try a case, is not bound to transfer it, but may elect to commit the case to a Court of Session. QUEEN-EMPRESS *v.* FELIX

[I. L. R., 22 Mad., 148

72. ———— *Criminal Procedure Code, s 454—European British subject—Relinquishment of right to be dealt with as such British subject—Trial by second class Magistrate.*—A European British subject was prosecuted

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73. ———— *Criminal Procedure Code (Act X of 1882), s. 164—Oaths Act (X of 1873), ss. 4, 5, 14—False evidence.*—A Magistrate, acting under Criminal Procedure Code, s. 164, has power to administer an oath, and a charge of perjury can be framed with regard to statements made before him on oath when he is so acting. QUEEN-EMPRESS *v.* ALAGU KONE

[I. L. R., 16 Mad., 421

74. ———— *Criminal Procedure Code (1882), s. 457—Power of Magistrate*

MAGISTRATE—*continued.*

4. POWERS OF MAGISTRATES—*continued.*

(Act X of 1882) from trying an accused person under s. 174 of the Penal Code (XLV of 1860) for disobedience of a summons issued by him in his capacity of Mamlatdar. In construing s 487 of Act X of 1882, effect must be given to the words "as such Judge or Magistrate," and these words must be read in connection with all the three classes of offences previously referred to. *Queen-Empress v. Sarat Chandra Rakhit, I. L. R., 16 Calc., 766,* followed. QUEEN-EMPRESS v. RAIJI DAJI

[I. L. R., 18 Bom., 380

s. 386 of the Criminal Procedure Code, is not required by law to try any claim which may be preferred to the ownership of the property distrained. QUEEN-EMPRESS v. GASPER . I. L. R., 22 Calc., 935

76. ——— *Criminal Procedure Code (1882), s. 144—Executive powers of Magistrate—Order which might have the effect of interfering with the execution of a decree of a Civil Court.*—A District Magistrate has no power, either under s 144 of the Code of Civil Procedure or in his executive capacity, to make an order for the re-building of a structure on private land which has fallen into disrepair or been pulled down, neither has he power to make any order which would have the direct effect of interfering with the execution of a decree of a Civil Court. IN THE MATTER OF THE PETITION OF RAHMAT-ULLAH

[I. L. R., 17 All., 485

77. ——— *Criminal Procedure Code (Act X of 1882), s. 497—Transfer of case—Bail—Order admitting to bail—Power of*

78. ——— *Criminal Procedure Code (Act V of 1898), s. 190, sub-s (1),*

MAGISTRATE—*continued.*

4. POWERS OF MAGISTRATES—*concluded.*

he was not debarred by s. 191 of the Criminal Pro-

ing pending in any Court, but in the course of an investigation by the police into the matter of an information received by them. JAGAT CHANDRA MOZUMDAR v. QUEEN-EMPRESS

[I. L. R., 26 Calc., 786
3 C. W. N., 491

See QUEEN-EMPRESS v. ABDUL RAZZAK KHAN

[I. L. R., 21 All., 109

and QUEEN-EMPRESS v. FELIX

[I. L. R., 22 Mad., 148

5. REFERENCE BY OTHER MAGISTRATES

79. ——— Power in case referred for enhancement of punishment—*Criminal Pro-*

MATTER OF CHINNIMARRIGADU

[I. L. R., 1 Mad., 289

80 ——— *Criminal Procedure Code, 1872, s 46.*—A Magistrate to whom a case is referred for enhanced punishment has no power to send the case for enquiry to another Magistrate. QUEEN v. VELAYUDUM

[I. L. R., 4 Mad., 233

81. ——— *Criminal Procedure Code, 1872, s. 46—Return of case referred under s. 46.*—It is not competent for a Magistrate,

All orders passed after a case has been so returned are illegal. DULA FAQUEER v. BHAGIRAT SIRCAR

[6 C. L. R., 276

82. ——— *Criminal Procedure Code, 1872, ss. 41, 44, 46, and 281—Covenanted Magistrate of the third class on tour in division of a district—Subordination to Magistrate of the*

MAGISTRATE—*continued.*

5. REFERENCE BY OTHER MAGISTRATES —*continued.*

originally made over the case to him, within the meaning of s. 41 of Act X of 1872, and the procedure of the Magistrate was therefore according to law. *Held* also that, assuming that he was not so "subordinate," the provisions of s. 284 of Act X of 1872 would not have been applicable, as those provisions do not refer to the illegality of a sentence or to the case of a Magistrate transferring a case who has no power of transfer, but to the invalidity of a conviction for want of jurisdiction EMPRESS v. KALLU

[I. L. R., 4 All., 366

83. ———— Power to annul conviction in offence not triable by Subordinate Magistrate—*Criminal Procedure Code, 1872, s. 284.*—Where, on appeal from a conviction by a Subor-

[illegible]

trate, *Held* that the Magistrate of the district has no power to annul the conviction and sentence under s. 284 of the Code of Criminal Procedure, but should report the matter for the orders of the High Court. REG v. TUKARAM RAGHO . . 12 Bom., 234

84 ———— Reference to Magistrate with power to hear appeals *Criminal Procedure Code, 1861, s 276—Reference of cases by Subordinate Magistrates*—*Held* that a full-power

[illegible]

Criminal Procedure, to such Magistrate, but to the Magistrate of the district, to whom alone they are subordinate. REG. v BHAGU BIN SHABAJI

[5 Bom., Cr., 47

85. ———— Reference to Magistrate under s. 277, Criminal Procedure Code, 1861—*Power to send to Sessions for higher sentence.*—Where a case is referred to a Magistrate under s. 277 of the Code of Criminal Procedure, the Magistrate alone has jurisdiction, and cannot commit to the Sessions, on the ground that he considers the sentence which he is empowered to inflict is insufficient IN RE BHICKAREE MULLICK

[10 W. R., Cr., 50

86. [illegible]

[11 W. R., Cr., [illegible]

87 ———— *Issue of circu-* [illegible]

Procedure Code, 1861, were, on reference by a Sessions Judge, annulled as beyond the competence of the District Magistrate, and based on a misunderstanding of s. 277. REG. v. GUNA BIN REONAK

[3 Bom., Cr., 29

88. ———— *Power to dispose of case.*—On reference by a District Magistrate, a sentence passed by a full power Magistrate, in a case submitted to him by a second class Subordinate Magistrate, under s. 277 of the Criminal Procedure Code, 1861, annulled, as the Magistrate of the district alone had power to dispose of cases under that section. REG. v. KUBERIO RATNO

[4 Bom., Cr., 8

ANONYMOUS . . . 5 Mad., Ap., 43

89. ———— *Criminal Procedure Code, ss. 195, 476—Reference to "nearest Magistrate of the first class"—Sanction to Prosecution*—A Head Assistant Magistrate sanctioned a prosecution under Criminal Procedure Code, s. 195, on the charge of preferring a false complaint, and forwarded his proceedings to the Deputy Magistrate of another division of the district who ordinarily had no jurisdiction to try offences committed in the division under the Head Assistant Magistrate. *Held* that the Deputy Magistrate had jurisdiction to try the charge. QUEEN-EMPRESS v. NAGAPPA

[I. L. R., 16 Mad., 461

6. COMMITMENT TO SESSIONS COURT.

90. [illegible] to commit— [illegible]

Criminal Procedure. QUEEN v. [illegible]

[7 W. R., Cr., 104

91. ———— Power to commit—*Criminal Procedure Code, 1861, s. 171—False evidence*— [illegible]

could have committed the prisoner himself under [illegible]

[5 B. L. R., A. Cr., [illegible]

92. ———— *Case sent by Civil Court for investigation under s. 171, Criminal Procedure Code, 1861.*—When a Civil or Criminal Court sends a case for investigation to a Magistrate under s. 171 of the Code of Criminal Procedure,

MAGISTRATE—*continued.*

6. COMMITMENT TO SESSIONS COURT —*continued*

the Magistrate to whom the case is sent must himself hold the investigation. ANONYMOUS [6 Mad., Ap., 2

93. ——————— *Commitment by Subordinate Magistrate in case not exclusively tri-*

94. ——————— *Criminal Procedure Code, 1872, ss 46, 143—Order—Committal.*—The word "order" in s 46 of the Code of Criminal Procedure, associated as it is with the words "judgment and sentence" means a final order

95. ——— Power to direct committal —*Sessions Judge, Power of.*—A Magistrate of the district has no power to direct a Subordinate Magistrate to commit for trial in the Sessions Court accused persons who have been discharged by the Subordinate Magistrate, and such committal when made by the Subordinate Magistrate is illegal The Sessions Court is the only authority empowered by law to direct a committal. ANONYMOUS [4 Mad., Ap., 31

96. ——————— *Commitment by Sessions Judge to Magistrate—Trial by Joint Magistrate*—Where a Magistrate of a district who had discharged a prisoner was subsequently directed

97. ——————— *Reference to Ses-*

VIII of 1869, it is no longer necessary to refer such cases to the High Court, as required by the Court's ruling in *Reg. v. Chanreraya bin Chanbasaya, 5 Bom, Cr., 65.* REG. v. KALA BIN HARI GAMA [7 Bom, Cr., 72

98. ——————— *Criminal Procedure Code (Act VIII of 1869), s. 435—Case dismissed without sufficient inquiry.—Semble*—When a charge is dismissed by a Subordinate Magistrate without inquiry, a Magistrate has no power, under s 435 of Act VIII of 1869, to order a trial before another Magistrate, but can only order a commitment to the Court of Session. QUEEN v. HIRALAL SING [5 B. L. R., Ap., 48: 14 W. R, Cr., 8

99. ——————— *Power to set aside finding where the Magistrate acted without jurisdiction—Criminal Procedure Code, 1869, s. 435.*—Where a Subordinate Magistrate of the first class acting without jurisdiction held a trial and acquitted the accused person under s 255 of the Code

100. ——————— *Magistrate and Joint Magistrate, Power of—Preliminary enquiry.*—Legally and for the purposes of a commitment, a

district, the District Magistrate has no power to direct a re-trial under the provisions of s 435 of the Code of Criminal Procedure. REG. v. SUBHANA BIN GANU . . . . . . 9 Bom., 169

102. ——————— *Courts of Head Assistant Magistrate and Deputy Magistrate—Trial of Munsif for extortion—Mad. Reg VI of 1816, s. 8*—The Courts of the Head Assistant Magistrate and of the Deputy Magistrate have jurisdiction to try a District Munsif on charges of extortion in the course of the exercise of his judicial functions.

103. ——— Duty of Magistrate to commit—*Magistrate making enquiry in Sessions case —Discharge of accused—Criminal Procedure Code,*

MAGISTRATE—*continued.*

6. COMMITMENT TO SESSIONS COURT —*continued.*

1872, s. 195.—A Magistrate enquiring into a case exclusively triable by the Court of Session is not bound to commit the accused person for trial, where the evidence for the prosecution, if believed, would end in a conviction, but is competent, if he discredits such evidence, to discharge the accused. LACHMAN *v.* JUALA . . . . I. L. R., 5 All., 161

104. ——— *Enquiry into case triable by Court of Session*—*Held*, where a Magistrate had tried a case exclusively triable by a Court of Session, and the conviction of the accused person and the sentence passed upon him at such trial were for that reason annulled by the Court of Session, but the proceedings held at such trial were not annulled, [illegible] accused perso[illegible] dence given [illegible] ILAHI BAKHSH . . . [illegible]

105. ——— *Criminal Procedure Code (1898), s. 208—Duty of Magistrate enquiring into a case triable by the Court of Session to take the evidence of all the witnesses produced by the accused*—A Magistrate enquiring into a case under Ch XVIII of the Code of Criminal Procedure is not empowered to frame a charge or make out an order for commitment until and after he has taken all such evidence as the accused may produce before him for hearing. QUEEN-EMPRESS *v.* AHMADI [I. L. R., 20 All., 264

106. ——— *Criminal Procedure Code (1882), s. 253—Duty of Magistrate in dealing with the evidence produced in a case triable by a Court of Session.*—*Held* that a Magistrate enquiring into a case triable by the Court of Session is not bound to commit simply because the evidence for the prosecution, if believed, discloses a case against the accused, but he is competent to consider the reliability of such evidence and to discharge the accused if he find it untrustworthy. IN RE THE PETITION OF KALYAN SINGH I. L. R., 21 All., 265

107. ——— *Criminal Procedure Code (Act X of 1882), s. 349.*—Under [illegible]

District Magistrate returned the record to the second class Magistrate, directing him to commit the case to the Sessions Court. The committal directed was duly made The High Court refused to interfere [illegible]

QUEEN-EMPRESS *v.* CHANDU GOWALA [I. L. R., 14 Calc., 355

See QUEEN EMPRESS *v.* HAVIA TYLLAPA [I. L. R., 10 Bom., 196

108. ——— *Criminal Procedure Code, 1882, ss. 209 and 210—Discharge of accused—Magistrate, Obligation of, to commit when primâ facie case is made out against accused.*—Under ss. 209 and 210 of the Criminal Procedure Code (Act X of 1882), a Magistrate holding a preliminary enquiry ought to commit the accused to the Court of Session when the evidence is enough to put the party on his trial, and such a case obviously arises when credible witnesses make statements which, if believed, would sustain a conviction. QUEEN-EMPRESS *v.* NAMDEV SATVAJI [I. L. R., 11 Bom., 372

109. ——— *Penal Code, ss. 75, 411—Punishment not within jurisdiction of Magistrate.*—Where an offence under s. 411 read with s. 75 of the Penal Code appears to be deserving [illegible]

110. ——— *Power of commitment to Sessions Judge—Code of Criminal Procedure (1882), s. 254—Penal Code (Act XLV of 1860), s. 147—Circular order No. 9 of 6th September 1869—Rioting.*—The commitment of a case under s 147 of the Penal Code to the Court of Session by a Deputy Magistrate is not necessarily illegal. Although the case is shown to be triable only by a Magistrate under the second schedule of the Criminal Procedure Code, there is nothing in s. 254 of the [illegible]

opinion cannot be adequately punished by him [illegible]

[illegible]

7. WITHDRAWAL OF CASES.

[illegible]

Magistrate is unable to complete [illegible] self. But when a case under trial is removed under s 47, the whole proceedings must commence *de novo* in the manner provided for in s. 45. QUEEN *v.* KHAN MAHOMED . . 24 W. R., Cr., 53

112. ——— Power to withdraw case —*Criminal Procedure Code, 1872, s. 47*—Magistrates of districts should exercise the powers conferred on them by s. 47 of Act X of 1872 only when it is absolutely necessary for the interests of justice that they should do so; and when one of the parties to a

MAGISTRATE—*continued.*

7. WITHDRAWAL OF CASES—*continued.*

case applies to have it withdrawn from the Magistrate enquiring into or trying it and referred to another Magistrate, the Magistrate of the district should give the other party notice of such application, and an opportunity of showing cause why such

the Subordinate Magistrate trying it and to try it

reason, withdrew such case from the Subordinate Magistrate trying it and referred it to another for trial, the High Court set aside the order of the District Magistrate and of the Magistrate to whom such case was referred for trial, and directed the Magistrate from whom it had been withdrawn to proceed with it. IN THE MATTER OF THE PETITION OF UMRAO SINGH v. FAKIR CHAND

[I. L. R., 3 All., 749

113. ———— *Criminal Procedure Code, 1872, ss. 47, 491—Act XI of 1874,*

114 ———— Transfer of criminal case —*Criminal Procedure Code (Act X of 1882), ss. 17, 528*—A Magistrate who is subordinate to a Subdivisional Magistrate is also subordinate to the

115. ———— *Criminal Procedure Code, s. 528—Village Munsif.*—A Village Munsif not being a Magistrate under the Criminal Procedure Code, a Joint Magistrate has no power under the

draw a case

for disposal

VARAYACHA

116. ———— *Criminal Procedure Code (Act X of 1882), s. 528*—An order under s. 528 of the Criminal Procedure Code (Act X of 1882) transferring a case for enquiry or trial from one Magistrate to another ought not to be made without notice to the accused QUEEN-EMPRESS v. SADASHIV NARAYAN JOSHI . I. L. R., 22 Bom., 549

MAGISTRATE—*continued.*

7. WITHDRAWAL OF CASES—*concluded.*

8. RE-TRIAL OF CASES.

117. ———— Fresh trial after discharge —*Criminal Procedure Code, 1861, ss. 68 and 225—Discharge of accused—Institution of fresh proceedings.*—Where an accused person is discharged by a Deputy Magistrate under s 225 of the Code of Criminal Procedure, after a preliminary enquiry, the Magistrate of the district may proceed against him afresh under s. 68 of the Criminal Procedure Code. IN THE MATTER OF THE PETITION OF RAMJAI MAJUMDAR . . . 6 B. L. R., Ap., 67

[14 W. R., Cr., 65

118. ———— *Orders under s. 536, Criminal Procedure Code, 1872—Hearing by District Magistrate after prior dismissal*—When a duly empowered Magistrate has decided a matter under s 536, Code of Criminal Procedure, by dismiss-

9 REVIEW OF ORDERS.

119. ———— Committing order, Power to cancel.—Where a Deputy Magistrate has once made an order transferring a case for trial to the Magistrate, he has no power to cancel the order and replace the case on his own file. QUEEN v. CHUNDER SEEKUR ROY . . . 12 W. R., Cr., 18

120 ———— Power to vary sentence.—A Magistrate has not authority to vary any sentence he may have once passed on a prisoner and which has been finally recorded. REG. v. TOOKIA . 1 Bom., 3

121. ———— Power to revive order which has been quashed.—On the 7th of June 1881 the Assistant Commissioner of Hylakandi, in

the case off the file, at the same time referring the matter to the Deputy Commissioner. The latter declined to interfere, informing the Assistant Commissioner that he saw no illegality in his order. Thereupon the Assistant Commissioner passed an order declaring that his order of the 7th of June 1881 remained in full force. On a reference to the High Court, made by the Officiating Sessions Judge of Sylhet, under s. 297 of the Code of Criminal Procedure,—*Held* that the Magistrate having, on the 25th of August 1881, set aside his order of the 7th of June 1881, and struck the case off the file, he had

MAGISTRATE—*continued.*

9. REVIEW OF ORDERS—*concluded.*

no power to revive it without a fresh proceeding. BRADLEY v. JAMESON . I. L. R., 8 Calc., 580 [11 C. L. R., 414

10 SPECIAL ACTS.

122. ——— Act XIX of 1838, s. 13 (Coasting Vessels, Bombay).—Only a full-power Magistrate had jurisdiction to convict of an offence under s 13 of Act XIX of 1838. REG. v KASAMJI . . . 5 Bom., Cr., 6

123. ——— Act XXVI of 1850 (Towns Improvement, Bombay)—*Infliction of penalty for breach of rule under.*—*Held* that a Subordinate Magistrate has no jurisdiction to impose a penalty for breach of a rule made by the Town Commissioners under Act XXVI of 1850, s. 7, cl. 5. REG. v. MALHARJI BIN NAULOJI . . 3 Bom., Cr., 36

124. ——— *Municipal Commissioners, Committee of, appointed under.*—The Managing Committee of Municipal Commissioners [illegible]

125. ——— *Criminal Procedure Code, VIII of of 186 — Schedule—Breach of Municipal rules under Act XXVI of 1850.*—By virtue of the last part of the schedule headed "offences against other laws" added to the Code of Criminal Procedure by Act VIII of 1869, a Subordinate Magistrate, second class, can take cognizance of the offence of a breach of the Municipal rules promulgated under Act XXVI of 1850. REG v. DHARMAYA VALAD SANGAPA . . . 8 Bom., Cr., 12

126. ——— *Municipal Commissioners, Power of, to assume judicial powers—Power to try offenders under rules made by Municipal Commissioners.*—Municipal Commissioners appointed under Act XXVI of 1850 have not, by that Act, conferred upon them, nor are they entitled to assume, judicial powers with reference to breaches of rules or bye-laws made by them under that Act, and such rules are *ultra vires* in giving them such powers. *Reg* v. *Kalidas Keval, 5 Bom., Cr., 10,* [illegible] ...ry offen- ... d in the ... as well ... t y such ... *gapa,* 8 ... [illegible] [8 Bom., Cr., 39

[illegible] summarily to hear and determine all offences against the Act. REG. v. PRABHAKAR N. SOMAN [3 Bom., Cr., 11

MAGISTRATE—*continued.*

10. SPECIAL ACTS—*continued.*

128. ——— Act XXII of 1855 (Ports [illegible] vessel for an offence committed against s. 46 of that Act. REG. v. TUNGA TUKA . 5 Bom., Cr., 14

129. ——— Act I of 1858 (Compulsory Labour, Madras), ss. 1 and 6—*Acts and omissions.*—The only acts or omissions over which a Magistrate has jurisdiction under Act I of 1858 are those specified in the 1st section. Cases under s. 6 of the Act are not cognizable by a Magistrate. ANONYMOUS . . . . 4 Mad, Ap, 21

130. ——— Beng. Act III of 1833 (Transport of Native Labourers)—*Penal Code, ss. 65 and 67.*—*Held* that a Subordinate Magistrate of the first class has power to deal with the case of an offence provided for by a special law (in this case Bengal Act III of 1863) when the punishment awardable is six months' fine, and fine only, s. 67, and not s 65, of the Penal Code being applicable to such a case. QUEEN v. CHUNDER PROSAUD SINGH [10 W. R., Cr., 30

131 ——— Bom. Act IX of 1863 (Cotton Frauds), s. 9.—Conviction under s 9 of Bombay Act IX of 1863, and sentences of one [illegible] as well as an order ... want of ... trate who ... over the person convicted, and for want of evidence of fraud. REG. v. JIVAN USMAN . . 3 Bom., Cr., 12

132. ——— Bom. Act VIII of 1866 (Poisonous Drugs), s. 11.—Convictions under s. 11 of Bombay Act VIII of 1866 (Poisonous Drugs Act) can only be obtained outside the town and island of Bombay before Magistrates of the first class. EMPRESS v. IMAMDU . I. L. R., 4 Bom., 167

[illegible] *Act X of 1866, s. 1, cl.* [illegible] *Government land.*—The offence committed in contra[illegible] of the rules framed ... Act ... of ... ence by a Magistrate of the second class were set aside by the High Court. QUEEN-EMPRESS v. SHIVARAM [I. L. R., 8 Bom., 501

134. ——— ss. 125, 214, and 215—*Boundary-marks—Rules 101 and 111, cl. 3 (a).*—The accused was charged before a second class Magistrate with digging earth within a space of two cubits of earthen boundary-mark, in contravention of rule 101 of the Rules made by Government under s. 214 (g) of the Bombay Land Revenue Code (Act V of 1879). The Magistrate convicted the accused under rule 111, cl. 3 (a), and sentenced him

MAGISTRATE—*continued.*

10. SPECIAL ACTS—*continued.*

to a fine of one rupee *Held* that the conviction and sentence were illegal S 125 of the Land Revenue Code does not give jurisdiction to any Magistrate to try a person accused of injuring a boundary-mark. QUEEN-EMPRESS *v.* IRAPPA

[I. L. R., 13 Bom., 291

135 ——— Bom. Reg. XXI of 1827—*Offence against opium laws—Power of fine*—The District Magistrate (whose Court is the proper tribunal for the trial of an offence relating to the smuggling of opium) has, under s 21 of the Code of Criminal Procedure, power to inflict any fine provided by Regulation XXI of 1827 for such offence, even though the fine may exceed R1,000 REG *v* NARAYAN GANGARAM . . 9 Bom., 343

136 ——— *Illegal possession of opium*—The offence of possessing above a quarter of a Surat ser of opium not shown to have been legally obtained is exclusively cognizable by the District Magistrate. *Reg* v. *Narayan Natha, Criminal Reference No 209 of 1869*, overruled. REG. *v.* HIRA JIVA . . . 7 Bom., Cr., 59

137. ——— s. 7—*Offence against opium laws*—The offence of unlawfully being in possession of smuggled opium is an offence ex-

[illegible]

try a person accused of, such an offence. *Reg* v. *Hira Jiva, 7 Bom., Cr., 59*, approved, and the Court's reply, No 1231 of 19th August 1867, to the Khandesh Sessions Judge's reference No 704 of 1867, dissented from REG *v.* LAKHU VALAD SAKHU

[8 Bom., Cr., 118

But *see* REG. *v.* SADU DADABHAI . 9 Bom., 166

138. ——— s. 10—*Breach of*

[illegible]

PAVADI . . . 3 Bom., Cr., 39

REG. *v.* GANIA BIN BAPU . 3 Bom., Cr., 50

139. ——— Cattle Trespass Act, III of 1857, s 13—*Act XVII of 1862.*—The repealing section of Act XVII of 1862 did not affect the powers of a Subordinate Magistrate under s 13 of Act III of 1857. REG. *v.* KASSAMIA 1 Bom., 100

140. ——— *Act XVII of 1862.*—The latter portion of s. 13 of Act III of 1857 having been repealed by Act XVII of 1862, —*Held* that the offences created by that section might be dealt with by the ordinary criminal tribunals, subject to the provisions of the Code of Criminal Procedure. REG. *v* MATHUR PURSHOTAM

[4 Bom., Cr., 13

141 ——— A Magistrate cannot, under s. 13, Act III of 1857, punish except for an act of forcible opposition to the seizure of cattle damage feasant HILLS *v.* SREEHURRE ROY

[7 W. R., 155

142 ——— s. 18—*Criminal Procedure Code, 1861, s. 21.*—By virtue of s 21 of the Criminal Procedure Code, a Subordinate Magistrate of the first class had jurisdiction to try an offence under s. 18 of Act III of 1857 (Cattle Trespass Act), there being no provision in that Act as to the authorities by which offences committed under it were to be tried. REG. *v.* GANGA KOM MHASU . . . . . 5 Bom., Cr., 13

143 ——— Cattle Trespass Act (I of 1871), ss. 20 and 23—*Special jurisdiction—Criminal Procedure Code (1882), ss. 1 and 192—Transfer of criminal case.*—The jurisdiction conferred by ss. 20 to 23 of the Cattle Trespass Act (I of 1871) is a special jurisdiction, and, as such, it is under s 1 of the Criminal Procedure Code (Act X of 1882) unaffected by its provisions, and therefore s 192 does not authorize the transfer of a case to which ss. 20 to 23 of the Cattle Trespass Act apply. SHAMA *v.* LECHHU SHEKH I. L. R., 23 Calc., 300

144. ——— *Order by a*

[illegible]

pensation, Order awarding.—S. 192 of the

[illegible]

Criminal Procedure Code. RAGHU SINGH, *v.* ABDUL WAHAB . . . I. L. R., 23 Calc., 442

145. ——— Chowkidars—*Maintenance of chowkidar on chakeran land*—A Magistrate can maintain a chowkidar in the possession of his chakeran land (*i e*, land set apart for his subsistence by his zamindar) Any such order of the Magistrate is appealable to the Superintendent of Police. QUEEN *v.* ZAMINDAR OF COLGONG . 1 W. R., Cr., 12

146. ——— Companies Act (VI of 1882), ss. 35, 252—*"Forfeit"—"Penalty"—Share warrant not duly stamped—Stamps on share warrants—Criminal Procedure Code (Act X of 1882), s. 32—Fine.*—There is no distinction between the word "forfeit" as used in s. 35 of the Indian Companies Act and the word "penalty" as used in other sections of the Act, and the omission to duly stamp a share warrant under that section is an offence under the Act punishable by a penalty, to enforce the

MAGISTRATE—*continued.*

10. SPECIAL ACTS—*continued.*

payment of which a Magistrate has jurisdiction under s. 252. In a case under s. 35 a Magistrate has no option but to inflict the full fine of R500 if the offence be proved. Where a person was charged, as being the principal officer of a company, with having issued nine share warrants not duly stamped in respect of which the penalties claimed under s 35 amounted to R4,500 and where it was contended that the infliction of such a penalty was beyond the jurisdiction of the Magistrate, which under the provisions of s. 32 of the Code of Criminal Procedure was limited to inflicting a fine of R1,000,—*Held* that the issue of each of the nine share warrants was a separate offence, and the fact that several offences have been committed, and therefore that the Magistrate's power to fine would extend to more than R1,000, was not affected by that section of the Code. QUEEN-EMPRESS *v.* MOORE [I. L. R., 20 Calc., 676

147.———— Illegal confinement—*Deputy Magistrate, Power of.*—The offence of illegal confinement for more than ten days is triable only by the Court of Session or by the Magistrate of the district, but not by a Deputy Magistrate. QUEEN *v.* KOMUL MANJEE . . . . 7 W. R., Cr., 13

148. ———— Madras Abkari Act—Mad. Act I of 1886, s. 43—*Default by persons bailed to appear before the Abkari Inspector—Procedure—Criminal Procedure Code (1882), s. 514.* —S. 43 of the Madras Abkari Act gives a Magistrate enforcing a penalty on the application of an abkari inspector jurisdiction to proceed in the same manner and with the same powers as if the default had been made by a person bailed to appear in his own Court. When an abkari inspector therefore, under the Abkari Act, s 43, forwards a bail bond to a Magistrate in order that payment may be compelled of the penalty mentioned therein, the Magistrate should call upon the person liable to appear and show cause against such order being made, and should otherwise observe the procedure prescribed in Criminal Procedure Code, s. 514. QUEEN-EMPRESS *v.* PALAYATHAN . . I. L. R., 18 Mad., 48

149. ———— Mad. Act III of 1865 (offences against special and local laws)—*Offences under Act XIII of 1859*—Madras Act III of 1865 authorizes every Magistrate to take cognizance of offences against Act XIII of 1859 ANONYMOUS . . . . 4 Mad., Ap., 64

150. ———————— *Criminal Procedure Code, 1869—Schedule—Mad. Act III of 1865.*—The jurisdiction conferred on Magistrates in the Madras Presidency by Madras Act III of 1865 is not ousted by the schedule to the Code of Criminal Procedure as amended by Act VIII of 1869. ANONYMOUS . . . . 7 Mad., Ap., 6

151. ———————— *Native Deputy Magistrate Madras Police Act (XXIV of 1859), s. 50.* By Madras Act III of 1865 a Native Deputy Magistrate has power to try police officers above the rank of a private charged with offences under the Madras General Police Act (XXIV of 1859), notwithstanding the proviso in s. 50 of the latter enactment. ANONYMOUS . . 4 Mad., Ap., 54

152.———————— *Repeal of Act XVI of 1874—Repeal, Effect of.*—The repeal of Madras Act III of 1865 by Act XVI of 1874 has not deprived Magistrates in the Madras Presidency of jurisdiction over offences created by special and local laws thereby given to them. REG. *v.* KANDAKORA [I. L. R., 1 Mad., 223

153. ———————— *Criminal Procedure Code, 1872, s. 8—Act XVI of 1874—Special and local laws.*—Madras Act III of 1865 declared every Magistrate in the Madras Presidency authorized to take cognizance of every offence committed against

[illegible]

any offence against any special or local law which

[illegible]

under any such special or local law, notwithstanding the special or local law indicated a particular tribunal as alone competent to try such offences, and to confer upon them jurisdiction also in the case of any special or local laws that might be passed after the enactment of Act III of 1865, unless jurisdiction was in any such later law specially conferred upon some other authority. S. 8 of the subsequent enact-

[illegible]

with less than one year's imprisonment, while a second class Magistrate's jurisdiction was similarly

[illegible]

(Criminal Procedure Code) EMPRESS *v.* ACHI [I. L. R., 2 Mad., 101

154. ———— Mad. Reg. XI of 1816, s. 10—*Village Magistrate—Fine for abusive language.*—A Village Magistrate has no jurisdiction to impose a fine upon a person who uses abusive language to the Village Magistrate in the course of a trial under s. 10, Regulation XI of 1816. ANONYMOUS [5 Mad., Ap., 32

155 ———— Mad. Reg IV of 1821—*Village Magistrate—Sheep-stealing—Mad Reg. XI of 1816.*—Sheep-stealing, when the value of the sheep is less than a rupee, is cognizable by a Village Magistrate under Regulation IV of 1821 as a petty

MAGISTRATE—*continued.*

10. SPECIAL ACTS—*continued.*

theft; but a sentence of fine by a Village Magistrate in such cases is illegal QUEEN v. BOYA LINGA [I L R., 5 Mad, 288

156. ——— Merchant Seaman's Act (I of 1859), s 83—*European British subject—Criminal Procedure Code, 1872, s. 72*—A Magistrate is not empowered to try a European British subject under cl 5, s. 83 of Act I of 1859 (The Merchant Shipping Act) *See* s 72 of the Criminal Procedure Code, 1872 ANONYMOUS [4 Mad, Ap., 23

ANONYMOUS . . . . 7 Mad., Ap., 32

157. ——— N.-W. P. & Oude Munici-

[illegible]

really due or not. ELLIS v. MUNICIPAL BOARD OF MUSSOORIE . . . I. L. R., 22 All., 111

158. ——— Opium Act (I of 1878), s 9—*Criminal Procedure Code (1882), s 29—Commitment by Magistrate to Court of Session of case exclusively triable by Magistrate.*—*Held* that, inasmuch as a conviction of an offence punishable under Act I of 1878 must be by a Magistrate, a Magistrate taking cognizance of such an offence has no power to commit to the Court of Session. *In the matter of Indrobee Thaba, 1 W. R., Cr., 5*, and *Reg v Donoghue, 5 Mad, 277*, referred to. QUEEN-EMPRESS v. SCHADE [I. L. R., 19 All, 465

159. ——— Penal Code, s. 174—*Offence in contempt of Court.*—A Magistrate can take cognizance of an offence under s. 174, Penal Code, committed against his own Court. QUEEN v GUDDY MISSER . . . . 8 W. R., Cr., 61

160. ——— s. 213—[illegible]

[illegible]

161. ——— s. 392—*Robbery—Deputy Magistrate, Power of.*—A charge of robbery, under s 392 of the Penal Code, is, under Act VIII of 1866 triable only by the Court of Session or by the Magistrate of the district, but not by a Deputy Magistrate. MADHUB GHOSE v. BULLYE METEA . . . . 7 W. R., Cr., 11

162 ——— s. 458—*Deputy Magistrate, Power of.*—A Deputy Magistrate has no jurisdiction in the case of an offence coming under s. 458 of the Penal Code. QUEEN v. SHADHY [1 W. R., Cr., 34

MAGISTRATE—*continued.*

10. SPECIAL ACTS—*continued.*

163. ——— ss. 380, 458, 459—*Lurking house-trespass by night with aggravating circumstances*—A Deputy Magistrate has no power to convict of theft (s. 380, Penal Code), where the offence charged is lurking house-trespass by night [illegible]

[illegible] W. R., Cr., 5

164. ——— s. 471—*Forged document—Power to commit for forgery produced before the Collector.*—[illegible] put in [illegible] commit [illegible] does not [illegible] Magistrate GOVERNMENT v HUNGESSUR SEIN [1 Ind. Jur., O. S., 11

165. ——— s 486—*Possession—Goods with counterfeit trade mark not intended to be sold within jurisdiction.*—A Magistrate has jurisdiction to try an offence under s 486 of the Penal Code if the accused be shown to be in possession of goods with a counterfeit trade mark for sale or any purpose of trade or manufacture, though the [illegible]

YUSUF MAHOMED ABARCTH v. BANSIDHUR SIRAOGI [I. L. R., 25 Calc., 639
2 C. W. N., 450

166. ——— s. 509—*Making indecent gestures* [illegible] s. 509 [illegible] trate of [illegible]

[illegible]

167. ——— Police Act (V of 1861)—*Criminal Procedure Code, 1861, s. 133—Offence* [illegible]

168. ——— s. 29—*Deputy Magistrate—Power of fine*—A Deputy Magistrate exercising the full powers of a Magistrate has jurisdiction, under s. 29, Act V of 1861, to fine police officers for violation of duty. ANONYMOUS [4 W. R., Cr., 2

169 ———*Magistrate*—

[illegible] W. R., Cr., 6

170. ——— Post Office Act, XIV of 1866, s. 47—*Subordinate Magistrate.*—A Subordinate Magistrate has jurisdiction to try a prisoner for an offence under s. 47 of the Indian Post Office (Act XIV of 1866). REG. v. VITHU BIN MALLU [5 Bom., Cr., 38

MAGISTRATE—*continued.*

10. SPECIAL ACTS—*continued.*

171. ——— Post Office Acts, XVII of 1854 and XIV of 1866, s. 48—*Magistrate, Obligation of, to commit.*—On a reference by a Sessions Judge in reviewing the monthly magisterial returns,—*Held* that a conviction and sentence recorded by a Magistrate under s. 50 of Act XVII of 1854 (corresponding with s. 48 of the Act of 1866 were illegal, as the Magistrate had no jurisdiction finally to dispose of the case, but was bound to commit it for trial before the Court of Session. REG. v. ATMARAM VAMAN BHANDARKAR . . . 3 Bom., Cr., 8

172. ——— Railways Act (XVIII of 1854, ss. 17 35)—*Bom. Reg XII of 1827, ss. 5, 41.*—By s 3 of the Railway Act, district police officers in the Presidency of Bombay could punish, to the extent of the power conferred upon them in petty

[illegible]

[5 Bom., Cr., 51]

173. ——— s. 26—*Mad Act III of 1865*—Magistrates of all grades are, under Madras Act III of 1865, competent to try persons charged with offences under s. 26 of the Railway Act, XVIII of 1854. ANONYMOUS . 4 Mad., Ap., 9

ANONYMOUS . . . 6 Mad., Ap., 41

The schedule to the Criminal Procedure Code, 1869, made no alteration in this respect. ANONYMOUS [7 Mad., Ap., 8

174. ——— *Conviction by*

[illegible]

175. ——— Railways Act (IX of 1890), s. 125—*Permitting cattle to stray upon a railway—Discretion of Magistrate.*—When the owner of cattle, which have been allowed to stray upon a railway, is prosecuted under the Railway Act, 1890, s. 125, cl. 1, the Magistrate is bound to ascertain whether the person charged was himself guilty. QUEEN-EMPRESS v. ANDI . I. L. R., 18 Mad., 228

176. ——— Registration Act, 1866, ss. 91 and 95—*Committal to Sessions Judge.*—*Held* that the committal of the accused to the Court

[illegible]

the accused. REG. v. RAYLOJIRAY BIN HANMANTRAY [5 Bom., Cr., 7

177. ——— Registration Act, 1877, s. 83—*Criminal Procedure Code, s. 29 Jurisdiction of second class Magistrate.*—S. 29 of the Code of Criminal Procedure, 1882, does not affect the jurisdiction given to a second class Magistrate by s 83 of the Registration Act, 1877, as amended by Act XII of 1879 QUEEN-EMPRESS v. KRISHNA [I. L. R., 7 Mad., 347

MAGISTRATE—*concluded.*

10. SPECIAL ACTS—*concluded.*

178. ——— Salt laws—*Criminal Procedure Code, 1861, s 21—Cases under local laws.*—A Magistrate is bound, with reference to s. 21 of the Code of Criminal Procedure, to proceed in the

[illegible]

179. ——— Stamp Act, 1869, s. 43—*Magistrate authorized by Collector to prosecute.*—

[illegible]

competent also to try persons whom he prosecutes.

[illegible]

180. ——— Whipping—*Second class Magistrate—Sentence of whipping—Code of Criminal Procedure (Act X of 1872) (Act X of 1882), ss. 2 and 32.*—A person appointed a Magistrate of the second class under Act X of 1872 is incompetent, since the coming into force of Act X of 1882, to pass a sentence of whipping, unless he is specially empowered so to do according to the provisions of s. 32 of the latter Act. EMPRESS v. BHAGVANTA BAYJI [I. L. R., 7 Bom., 303

181. ——— Witness—*Money deposited as expenses of witness, Order as to—Order to credit money deposited under Criminal Procedure Code, 1861, s. 228, to Government.*—A Magistrate has no jurisdiction to order a sum of money, deposited under s 228 of the Code of Criminal Procedure, for the refund of which an application was made, to be credited to Government. ANONYMOUS [6 Mad., Ap., 9

MAHOMEDAN COMMUNITY.

See HINDU LAW—CUSTOM—MAHOMEDANS [I. L. R., 3 Calc., 694

See JURISDICTION OF CIVIL COURT—CASTE. [I. L. R., 13 Bom., 429
I. L. R., 20 Bom., 190

MAHOMEDAN LAW.

See GRANT—CONSTRUCTION OF GRANTS. [I. L. R., 18 Mad., 257

See HUSBAND AND WIFE. [I. L. R., 21 Bom., 77

See PURDANISHIN WOMEN. [I. L. R., 13 Mad., 330

——— Ecclesiastical Law.

See RELIGION, OFFENCES RELATING TO. [I. L. R., 7 All., 461

MAHOMEDAN LAW—*concluded.*

1. ———— **Extent of**—*Religion.*—Although the Mahomedan law, pure and simple, is part of the Mahomedan religion, it does not of necessity bind all who embrace the Mahomedan creed. MAHOMED SIDICK *v.* AHMED ABDULA HAJI ABDSATAR *v.* AHMED . **I. L. R., 10 Bom., 1**

2. **Authorities on Mahomedan law, Value of**—*Rule of interpretation.*—It is a general rule of interpretation of the Mahomedan law that in cases of difference of opinion amongst the jurisconsults Imam Abu Hanifa and his two disciples, Qazi Abu Yusuf and Imam Muhammad, the opinion of the majority must be followed, and in the application of legal principles to temporal matters, the opinion of Qazi Abu Yusuf is entitled to the greatest weight. ABDUL KADIR *v.* SALIMA

[**I. L. R., 8 All., 149**

3. ——— **Doubtful point of law**—*Rule of interpretation—Practice of Court.*—Where by writers of the highest authority on the law of a particular sect a point of law is admitted to be doubtful, regard should be had to the practice of the Courts. DAIM *v.* ASOOHA BEBEE . **2 N. W., 360**

MAHOMEDAN LAW—ACKNOWLEDGMENT.

1. ———— **Acknowledgment by father**—*Effect of acknowledgment of son or daughter.*—According to Mahomedan law, the acknowledgment of a father renders a son or daughter a legitimate child and heir, unless it is impossible for the son or daughter to be so. OOMDA BIBEE *v.* JONAB ALI

[**5 W. R., 132: 1 Jur., N. S., 143**

FUZEELUN BEEBEE *v.* OMDAH BEEBEE

[**10 W. R., 469**

WUHEEDUN *v.* WUSEE HOSSEIN **15 W. R., 403**

2. ———— *Effect of acknowledgment of son.*—According to Mahomedan law, the acknowledgment of the father renders the son a legitimate son and heir, whether the mother was or was not lawfully married to the father. NUJMOODEEN AHMED *v.* ZUHOORUN . **10 W. R., 45**

3. ———— *Proof of legitimacy—Inference.*—The Mahomedan law allows legitimacy to be inferred from circumstances without direct proof. MAHOMED GOUHUR ALI KHAN *v.* HABBATOONISSA . **2 W. R., 52**

Upheld on the facts by the Privy Council. HABEEBOOLLAH *v.* GOUHUR ALLY KHAN

[**18 W. R., 523**

4. ———— *Proof of legitimacy—Marriage—Inference.*—According to the [illegible]

[illegible] NISSA BEGUM

[**3 W. R., P. C., 37: 8 Moore's I. A., 133**

MAHOMEDAN LAW—ACKNOWLEDGMENT—*continued.*

5. ———— *Presumption as to cohabitation—Legitimacy of issue.*—The Mahomedan law is very scrupulous in bastardising the issue of any connexion in which it can be shown by presumption that there has been cohabitation and acknowledgment of paternity. ROSHUN JEHAN *v.* ENAET HOSSEIN. ENAET HOSSEIN *v.* ROSHUN JEHAN . **5 W. R., 5**

Affirmed by Privy Council in KHAJOOROONISSA *v.* ROWSHAN JEHAN **I. L. R., 2 Calc., 184**

[**26 W. R., 36: L. R., 3 I. A., 291**

6. ———— *Presumption of marriage—Onus probandi.*—According to the Mahomedan law, a public acknowledgment of paternity [illegible]

sumption, the onus of proving the impossibility of the marriage is on the other side. ROOK BEGUM *v.* WALAGOWHUR SHAH . **3 W. R., 187**

7. ———— *Legitimacy of son*—An acknowledgment by a Mahomedan that a certain person is his son is not *primâ facie* evidence of the fact which may be rebutted, but establishes the fact acknowledged. Such acknowledgment is valid when the ages of the parties admit of the relationship between them, and where the descent of the party acknowledged has not been already established from another. IN THE MATTER OF THE PETITION OF NAJIBUNNISSA . **4 B. L. R., A. C., 55**

JAIBUN *v.* NUJEEBOONISSA . **13 W. R., 497**

affirming, on appeal, NUJEEBOONISSA *v.* ZUMEERUN

[**11 W. R., 426**

8. ———— *Presumption of* [illegible]

SINGJEE UBBY SINGJEE *v.* JET SINGJEE UBBY SINGJEE **3 Moore's I. A., 245: 6 W. R., P. C., 46**

9. ———— *Presumption as to legitimacy of son—Custom of primogeniture.*—Observations on the law laid down by the Privy Council regarding the presumption of legitimacy which arises, under the Mahomedan law, in the absence of proof of marriage, when a son has been uniformly treated by his father and all the members of the family as legitimate. MUHAMMAD ISMAIL KHAN *v.* FIDAYATUNNISSA . **I. L. R., 3 All., 723**

10. ———— *Legitimacy of son—Presumption of marriage.*—Where a son has been uniformly treated by his father and all the members of the family as legitimate, a presumption arises under the Mahomedan law that the son's mother was his father's wife. KHAJOOROONISSA *v.* ROWSHAN JEHAN

[**I. L. R., 2 Calc., 184: 26 W. R., 36**

L. R., 3 I. A., 291

MAHOMEDAN LAW—ACKNOWLEDGMENT—*continued.*

Affirming decision of High Court in ROSHUN JEHAN v. ENAET HOSSEIN. ENAET HOSSEIN v. ROSHUN JEHAN . . . . 5 W. R., 5

11. ———— *Acknowledgment of children as sons.*—The acknowledgment and recognition of children by a Mahomedan as his sons, giving them the status of sons capable of inheriting as being of legitimate birth, may, without proof of his express acknowledgment of them, be inferred from his treatment of such children, provided that *certain conditions negativing this relationship are* absent. The question whether such acknowledgment should be presumed or not, depends on the circumstances of each particular case. *Ashrufooddowlah Ahmed Hossein Khan v. Hyder Hossein Khan, 11 Moore's I. A., 94,* referred to and followed. MAHAMMAD AZMAT ALI KHAN v. LALLI BEGUM

[I. L. R., 8 Calc., 422
L. R., 9 I. A., 8

12. ———— *Presumption of marriage.*—According to Mahomedan law, mere continued cohabitation without proof of marriage or of acknowledgment is not sufficient to raise such a legal presumption of marriage as to legitimise the offspring. [illegible]

the presumption of a prior marriage, *primâ facie* at least excludes that presumption. ASHRUFOODDOWLAH AHMED HOSSEIN v. HYDER HOSSEIN KHAN

[7 W. R., P. C., 1: 11 Moore's I. A., 94

13. ———— *Illegitimacy of birth—Insufficiency of father's acknowledgment* [illegible] *validity* [illegible] a son born [illegible] the question [illegible] father could [illegible] the mother [illegible] hism The Court below found against her alleged conversion to the Mahomedan religion, and also found upon the facts that no marriage of the parents as distinguished from concubinage had taken place. The latter finding was affirmed. As to the question whether the son born to them had been legitimated by the [illegible] *eld* that [illegible] of a son, [illegible] the force [illegible] of legi- [illegible] of son- [illegible] gment in [illegible] *viz.,* of [illegible] ition of paternity. *Ashrufooddowla Ahmed Hossein v. Hyder Hossein Khan, 11 Moore's I. A., 94,* referred to and followed. ABDUL RAZAK v. AGA MAHOMED JAFFER BINDANIM . I. L. R., 21 Calc., 666
[L. R., 21 I. A., 56

14. ———— *Validity of—Acknowledgment of son.*—Where in a transaction with a third party *A* describes *B* as his son, and *B* speaks of *A* as his father, the acknowledgment of sonship is complete and formal, and, under the Mahomedan law, conclusive against all parties. NUBO KANT ROY CHOWDHRY v. MAHATAB BIBEE

[20 W. R., 164

15. ———— *Legitimation of offspring by acknowledgment.*—The acknowledgment and recognition of a natural son by a Mahomedan as his son gives him the status of a son capable of inheriting as a legitimate son, unless certain conditions exist. *Mahomed Azmat Ali Khan v. Lalli Begum, I. L. R., 8 Calc., 422,* referred to. Whether the offspring of an adulterous intercourse can be legitimated by any acknowledgment is an open question. SADAKAT HOSSEIN v. MAHOMED YUSUF

[I. L. R., 10 Calc., 663
L. R., 11 I. A., 31

16. ———— *Legitimacy—Effect of acknowledgment of sonship.*—*Held* by PETHERAM, C.J., that, according to the Mahomedan law, the effect of an acknowledgment by a Mahomedan that a *particular person, born of the acknowledger's wife before marriage,* is his son in fact, though the acknowledger may never have treated him as a legitimate son or intended to give him the status of legitimacy, is to confer upon such person the status of a son capable of inheriting as legitimate, unless conditions exist which make it impossible that such [illegible] ledger's son in fact.

[illegible]

legitimate son. [illegible] acknowledgment by [illegible]

mor [illegible] is his [illegible] son [illegible] as Eur [illegible] of his [illegible] as the [illegible] fairly to be deduced that the deceased ever intended to recognize the plaintiff and give him the status of a son capable of inheriting. *Sadakat Hossein v.*

MAHOMEDAN LAW—ACKNOWLEDGMENT—*continued.*

Mahomed Yusuf, I L R., 10 Calc., 663, referred to. MAHAMMAD ALLAHDAD KHAN *v.* MAHAMMAD ISMAIL KHAN . . I. L. R., 8 All., 234

17. ——— *Inheritance—Legitimacy—Acknowledgment of sonship.—Per* EDGE, *C.J.*, and STRAIGHT, *J.*—The rules of the

no specific person is shown to be the father, then the acknowledgment of him by another who claims him as a son affords a conclusive presumption that he is the legitimate child of the acknowledger, and places him in that category. Such a status once conferred cannot be destroyed by any subsequent act of the

parentage and other matters of personal status stand upon a higher footing than matters of evidence and form a part of the substantive Mahomedan law. So

proof of such a marriage, acknowledgment is recognized by the Mahomedan law as a means whereby marriage of the parents or legitimate descent may be established as a matter of substantive law. Such acknowledgment always proceeds upon the hypo-

Hossein Khan v. Hyder Hossein Khan, 11 Moore's I. A., 94; Muhammad Azmat Ali Khan v Lalli Begum, L. R., 9 I. A., 8 : I. L. R., 8 Calc., 422, and *Sadakat Hossein v. Mahomed Yusuf, L. R., 11 I. A., 31 I. L. R, 10 Calc., 663,* referred to MUHAMMAD ALLAHDAD KHAN *v.* MUHAMMAD ISMAIL KHAN . . . I. L. R., 10 All., 289

18. ——— *Legitimacy—Held* that a Mahomedan could not, by acknowledging him as his son, render legitimate a child whose mother at the time of his birth he could not have married by reason of her being the wife of another man. *Muhammad Allahdad Khan v. Muhammad Ismail Khan, I L. R., 10 All., 289,* followed. LIAQUAT ALI *v.* KARIM-UN-NISSA . I. L. R., 15 All., 396

19. ——— *Acknowledgment,*

20. ——— *Acknowledgment, Effect of—Legitimacy of children—Fornication—Sunni Mahomedans.*—Under the Mahomedan law, where a child is begotten by a Mahomedan father by a Hindu prostitute living with him, no acknowledgment by the father can confer on the child the status of legitimacy. BHAN BIBI *v.* LALON BIBI [I. L. R., 27 Calc., 801

21. ——— *Mode of acknow-*

22. ——— *Form of acknowledgment—Evidence of marriage.*—The acknowledgment need not be of such a character as to be evidence of marriage. WUHEEDUN *v.* WUSEE HOSSEIN [15 W. R., 403

23. ——— *Legitimacy of children—Presumption as to marriage*—Where a Mahomedan lady sued for a declaration of the validity of her marriage with the man with whom she had lived and of the legitimacy of their children, and relied upon the position which her reputed husband gave her during his lifetime in his family

MAHOMEDAN LAW—ACKNOWLEDGMENT—*concluded.*

given her evidence; that a valid Mahomedan mar-

KOOLSOOM. BUTOOLUN *v.* LLOYD 25 W. R., 444

24. ——————— *Illegitimate son—Informal acknowledgment.*—The son of a Mahomedan by a slave girl, if acknowledged by his father, is entitled to the same share as the son of a lawful wife. The acknowledgment of a son by a Mahomedan need not be a formal acknowledgment: if it can be made out from his acts and conduct, it will be sufficient. WATIULLA *v.* MIRAN SAHEB [2 Bom., 285

25. ——————— *Legitimacy of child.*—Notwithstanding Mahomedan law, a Court of Justice cannot pronounce a child to be the legitimate offspring of a particular individual when such a conclusion would be contrary to the course of nature and impossible. ASHRUF ALI *v.* ASHAD ALI [16 W. R., 260

HADUR . 4 B. L. R., A. C., 103; 12 W. R., 512

S. C. affirmed on review HIMMUT BAHADOOR *v.* SHAHAZADA BEGUM . . 14 W. R., 125

27. ——————— *Validity of acknowledgment—Insufficient acknowledgment, Effect of.*—The plaintiffs, *E* and *M*, were the illegitimate son and daughter of *B*, a Mahomedan woman. *E* died, and after his death the plaintiff sued his widow and *M* to recover his share of the property of *B*, which he claimed as co-heir of *E*. He relied upon a recital in a petition, in which *E*, the plaintiff, and *M*, describing themselves as the son and daughter of *B*, had prayed for a certificate under Act XXVII of 1860. *Held* that this was not such an acknowledgment of the plaintiff by *E* as to constitute between them the status of full brotherhood and heirship by Mahomedan law. *Semble*— ...other as his ...ld so as to be ...ding against ...r. SHAHEB- ... W. R., 113 [L. R., 1 I. A., 23

affirming decision of High Court in preceding case.

MAHOMEDAN LAW—BILL OF EXCHANGE.

——————— Notice of dishonour.—Notice of dishonour of a bill of exchange is not necessary by Mahomedan law. GAPINATH *v.* ABBAS HOSSEIN [7 B. L. R., 434 note

MAHOMEDAN LAW—CONTRACT.

1. ——————— Consideration—*Relationship.*—By Mahomedan law an agreement to pay an annuity, though signed and registered, has not the effect of a deed in English law, but requires a consideration to support it. The relationship existing between cousins is not a sufficient consideration to support such an agreement. JAFAR ALI NIZAM ALI *v.* AHMAD ALI IMAM HAIDARBAKSH [5 Bom., A. C., 37

2. ——————— Mortgage—*Redemption of separate mortgagee from debt.*—The rule that if the owner of different estates mortgage them to one person separately for distinct debts, or successively to secure the same debt, the mortgagee may insist that one security shall not be redeemed alone, applies to a Mahomedan mortgage. VITHAL MAHADEV *v.* DAUD VALAD MUHAMMAD HUSEN [6 Bom., A. C., 90

MAHOMEDAN LAW—CUSTODY OF WIFE.

See HABEAS CORPUS . 13 B. L. R., 160

——————— Rights of mother and husband. ...ntitled to the ...ried, until she ...sband applied to a writ of *habeas corpus* to be "an infant under the age of sixteen years, to wit of the age of eleven years or

her away secretly, in the absence of her father and husband from Bandari, where they were all living together, to Calcutta IN THE MATTER OF KHATIJA BIBI . . . . . 5 B. L. R., 557

See IN THE MATTER OF MAHIM BIBI [13 B. L. R., 160

MAHOMEDAN LAW—CUSTOM.

See CONVERTS . I. L. R., 20 Bom., 53

See JURISDICTION OF CIVIL COURT—RELIGION . I. L. R., 15 Mad., 355

See LIMITATION ACT, 1877, ART. 120 [I. L. R., 21 Calc., 157 L. R., 20 I. A., 155

I. L. R., 19 All., 211

See MAHOMEDAN LAW—KAZI. [I. L. R., 18 Bom., 103

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM [I. L. R., 21 Calc., 157 L. R., 20 I. A., 155

MAHOMEDAN LAW—CUSTOM
—*continued.*

1. — **Kazi, Appointment of**—*Hereditary office, Grant of.*—In the absence of an established local custom to that effect, the office of Kazi is not hereditary. *Quære*—Whether such a custom would be valid JAMAL WALAD AHMED *v.* JAMAL WALAD JALLAL **I. L. R., 1 Bom., 633**

2. — ——— **Custom of right to eject on sale**—*Lease - Sale by lessor* —A Mahomedan residing at Zanzibar let a house situated there to the defendant, to be held by the latter as long as he pleased, under a lease in which he (the lessor) stipulated never to remove the lessee The plaintiff subsequently, with full knowledge of the lease, purchased the same house from the lessor, and as such purchaser sued to eject the defendant The plaintiff tendered evidence to show that by the custom of Zanzibar the defendant's tenancy was determined upon the sale by the landlord This evidence was refused *Held* that the alleged custom, even if proved, was invalid. It was unreasonable, as enabling a man, after having granted a lease, to deprive the lessee of the entire benefit of his lease DESOUZA *v* PESTANJI D ANJIBHAI . . **I. L. R., 8 Bom., 408**

3. ——— **Exclusion from inheritance of females by sons**—*Labis—Ravuthans of Palgat—Mahomedan religion—Hindu law of inheritance—Evidence necessary to support valid custom.*—A claim by the widow of S, Ravuthan, a Labi of Palgat, and her daughters, for their shares of his estate under Mahomedan law, was opposed by other members of the family, who pleaded that, according to a special custom obtaining among the Ravuthans of that part of the country adopted from Hindu law females are excluded from inheritance if sons or sons' sons exist In two instances it was proved that women of this class had obtained shares under Mahomedan law by suits without this plea having been put forward. The District Munsif

evidence. A custom, to be valid, must be consciously accepted as having the force of law MIRABIVI *v* VELLAYANNA . **I. L. R., 8 Mad., 464**

4. ——— **Division of estate in cases of intestacy**—*Impartible estate—Beng. Reg XI of 1793—Beng Reg. X of 1800*—The family usage that a zamindari has never been separated, but has devolved entire on every succession, though proved

DEEDAR HOSSEIN *v.* ZUHOOROONNISSA **[9 Moore's I. A., 441**

MAHOMEDAN LAW—CUSTOM
—*continued.*

5. ——— **Public worship in mosque**—*Injunction restraining defendants from interrupting religious ceremonies in a musjid—Right of imam and of mutwalis to be protected in their offices—Differences of opinion between the imam and certain of the worshippers as to observances at prayer.*—Among Sunni Mahomedans, neither on the ground of any general and express rule of Mahomedan law nor on the ground of the growth of customs separating different schools in so marked a manner that the followers of one school could not properly worship with those of another, did the introduction by the imam of (*a*) the loud-toned Amen, and of (*b*) the Rafadain, show such a change of tenets Nor was it in itself such an important departure from the custom of Sunnis as that it would disqualify the imam for officiating in a musjid where those ceremonies had not previously been used Nor did the introduction of (*a*) and of (*b*) justify a section of the worshippers in setting up another leader of prayer at the same time that prayer was being conducted by the duly authorized imam On the lower Appellate Court's findings of fact there was nothing in the constitution of the mosque which prohibited the adoption of (*a*) and (*b*), and those findings were conclusive. For the purpose, however, of considering the case from other points of view, their Lordships examined the whole of the evidence, and they agreed with the Subordinate Judge that there was no evidence showing that the mosque was not intended for the worship of all Sunnis or for all Mahomedans. Nor was there any rule of law that when public worship had been performed in a certain way for twenty years, there could not be any variation, however slight, from that way. The question in each case of dispute must be as to the magnitude and importance of the alleged departure. There had not been produced any text to show that a follower of Abu Hanifa would do wrong in following a practice recommended by others of the four imams. Nor was there any usage having the force of law among Sunni communities, forbidding the introduction of (*a*) and (*b*) into ceremonial prayer as shown by the evidence of learned Mahomedans, and by proof of their actual practice The judg-

ing to law if the occasion arose. FAZL KARIM *v.* MAULA BAKSH . **I. L. R., 18 Calc., 448 [L. R., 18 I. A., 59**

6. ——— **Immoral customs**—*Succession to property among Kanchans—Practices not recognizable by law as customs.* Among Mahomedan Kanchans, practices relating to their holding and inheritance of property, having an immoral tendency, were held to be not recognizable as customs, or enforceable as law. To recognize practices tending

MAHOMEDAN LAW—CUSTOM —*concluded.*

o promote prostitution, which the Mahomedan law reprobates and prohibits absolutely, would be contrary to the policy of that law. Where property left by a female Kanchani, deceased, was claimed by her legitimate kindred, it was *held* that an "adoption," so called, in conformity with those practices, had not operated to separate her from the family in which she was born. The mode in which her property had been acquired was not the subject of the present question, which was only

MAHOMEDAN LAW—CUTCHI MEMONS.

See CASES UNDER HINDU LAW—INHERITANCE—SPECIAL LAWS—CUTCHI MEMONS.

1. ———— Hindus—*Hindu Wills Act, s. 2—Probate of will.*—Cutchi Memons are not Hindus

are Mahomedans to whom Mahomedan law is to be applied, except when an ancient and invariable special custom to the contrary is established. IN RE ISMAIL . . . I. L. R., 6 Bom., 452

2. ———— Law of inheritance appli-

ABDOOL CADUR HAJI MAHOMED *v.* TURNER [I. L. R., 9 Bom., 158

MAHOMEDAN LAW—DEBTS.

See DEBTOR AND CREDITOR. [I. L. R., 8 All., 178

See CASES UNDER REPRESENTATIVE OF DECEASED PERSON.

See CASES UNDER SALE IN EXECUTION OF DECREE—DECREES AGAINST REPRESENTATIVES.

1. ———— Decree against heir of debtor —*Effect of decree against one heir.*—Under Mahomedan law, a decree against one heir of a deceased debtor cannot bind the other heirs. SITANATH DAS *v.* ROY LUCHMIPUT SINGH . 11 C. L. R., 268

debtor.—Per GARTH, *C.J.*—A decree by consent against one heir of a deceased debtor cannot, under the

MAHOMEDAN LAW—DEBTS—*continued.*

the estate which it is intended to charge are made parties to it. The right of a Mahomedan heir claiming the property of his deceased ancestor, who died indebted, is a right of representation only, and except as representative he has no right to the property whatsoever. ASSAMATHEMNESSA BIBEE *v.* ROY LUTCHMEEPUT SINGH [I. L. R., 4 Calc., 142: 2 C. L. R., 223

3. ———— Creditors of deceased person —*Alienation by heir—Purchaser from heir of Mahomedan—Lis pendens.*—The creditor of a deceased Mahomedan cannot follow his estate into the hands of a *bonâ fide* purchaser for value, to whom it has been alienated by the heir-at-law, whether the alienation has been by absolute sale or by mortgage. But where the alienation is made during the pendency

TAYYUBAN [I. L. R., 4 Calc., 402: L. R., 5 I. A., 211

4. ———— *Alienation by heirs—Rights of mortgagee.*—The debts of a de- ... the estate ... persons ... tgage of ... Chund, LAND ... R., 460

5. ———— The creditor of a deceased Mahomedan cannot follow his estate into the hands of a *bonâ fide* purchaser from his heir, *Bazayet Hossein v. Dooli Chund, L. R., 5 I. A., 211,* followed LAND MORTGAGE BANK *v.* ROY LUCHMIPUT SINGH . . 8 C. L. R., 447

6. ———— *Sale in execution* ... *against the representatives of de-*

Mahomedan for a debt incurred by him. *A* purchased certain property which had been allotted to the widow of the deceased in lieu of dower and of her share of the inheritance. Previously to the purchase, however, the widow had mortgaged the same property to ... know of the debt ... suit by *B* ... shown that ... heirs-at-law ... *eld* that *B* ... *v. Dooli*

MAHOMEDAN LAW—DEBTS—*continued*

Chand, L. R., 5 I. A., 211, followed. NARSINGH DASS *v.* NAJMOODDIN HOSSEIN
[I. L. R., 8 Calc., 20 : 10 C. L. R., 225

7. ———————— *Administration, Suit for—Suit by creditor of deceased Mahomedan against his heir—Sale in execution of decree*—After the death of a Mahomedan, several of his creditors sued his widow and daughter, and obtained decrees against the assets of the deceased, which assets had come into the possession of the mother and daughter. In execution of these decrees, portions of the property were sold: thereupon two married sisters of the deceased, who lived with their husbands apart from the widow and daughter, sued as heirs of the deceased to recover their shares of the property sold. *Held* that the property of the deceased having been attached and sold in payment of his debts, the plaintiffs' suit must be dismissed When a creditor of a deceased Mahomedan sues the heir in possession, and obtains a decree against the assets of the deceased, such a suit is to be looked upon as an administration suit; and those heirs of the deceased who have not been made parties cannot, in the absence of fraud, claim anything but what remains after the debts of the testator have been paid. *Nuzeerun v. Ameeroodeen, 24 W. R., 3; Assamathemnessa Bibee v Roy Lutchmeeput Singh, I. L. R, 4 Calc., 142; Kishwur Khan v. Jewun Khan, 1 Sel. Rep, 25; Khajah*

8. ———————— *Suit by creditor*

not by the extent of her interest in her late hus-

JAN *v* BAIJ NATH SINGH *alias* BAIJU SINGH
[I. L. R., 21 Calc., 311

9. ———————— *Suit by creditors*

MAHOMEDAN LAW—DEBTS—*continued.*

satisfaction of which the sale was effected. HAMIR SINGH *v.* ZAKIA I. L. R., 1 All., 57

HENDRY *v* MUTTYLALL DHUR
[I. L. R., 2 Calc., 395

10. ———————— *Succession—Suit against one of the heirs of a deceased person for debt.*—The heirs to a deceased Mahomedan divided his estate among themselves according to their shares under the Mahomedan law of inheritance, a small debt being due from the estate at the time of division Two of the heirs were subsequently sued for the whole of such debt. *Held* that, inasmuch as such

11. ———————— *Inheritance—Devolution not suspended till payment of deceased ancestor's debts—Decree in respect of deceased ancestor's debts passed against heirs*

contentious or non-contentious suit against only such heirs of a deceased Mahomedan debtor as are in possession of the whole or part of his estate, does not bind the other heirs who, by reason of absence or other cause, are out of possession, so as to convey to the auction-purchaser, in execution of such a decree, the rights and interests of such heirs as were not parties to the decree. In execution of a decree for a debt due by a Mahomedan intestate, which was passed

ance. *Held* by the Full Bench that the plaintiff was not entitled to recover from the auction purchaser, in execution of the decree, possession of his share in the property sold, without such recovery of possession being rendered contingent upon payment by him of his proportionate share of the ancestor's debt for

MAHOMEDAN LAW—DEBTS—*continued.*

which the decree was passed, and in satisfaction whereof the sale took place. *Wahidunnissa v. Sheobrattun, 6 B. L. R., 54; Assamathennessa Bibee v. Roy Lutchmeeput Singh; I. L. R., 4 Calc., 142; Mazhar Ali v. Budh Singh, I. L. R., 7 All., 297;* [illegible]

[illegible]

KHAN . . . . I. L. R., 7 All., 822

12. — *Inheritance —Devolution not suspended till payment of deceased ancestor's debts.* A creditor of *A*, a deceased Mahomedan, under a hypothecation bond, obtained a decree on the 20th December 1876 for recovery of the debt by enforcement of lien against *M*, one of *A*'s heirs, who alone was in possession of the estate; and, in execution of the decree, the whole estate was sold by auction on the 21st March 1878, and purchased by the decree-holder himself. *J*, another of *A*'s heirs, was not a party to these proceedings. On *J*'s death, her son and heir, *A H*, conveyed to *M A* the rights and interests inherited by him from his mother,—namely, her share in *A*'s estate. The purchaser of the share thereupon brought a suit against the decree-holder for its recovery. *Held* that, immediately upon the death of *A*, the share of his estate claimed in the suit devolved upon *J*, that she being no party to the decree of the 20th December 1876, her share in the property could not be affected by that decree, nor by the execution-sale of the 21st March 1878; that upon her death that share devolved upon her son, who conveyed his rights to the plaintiff, that the plaintiff was therefore entitled to recover possession of the share which he has purchased, but that he could not do so without payment to the defendant of his proportionate share of the debts of *A*, which were paid off from the proceeds of the auction sale of the 21st March 1878. *Jafri Begum v. Amir Muhammad Khan, I. L. R., 7 All., 822,* followed. MUHAMMAD AWAIS *v.* HAR SAHAI I. L. R., 7 All., 716

13. ——— *Liability of one of several heirs to pay ancestors' debt, when but for his own action debt would be barred by limitation. Justice, equity, and good conscience, Application of principle of—Act VI of 1871, s. 21.*—*A*, a Hindu and a creditor of *B*, a deceased Mahomedan, sued *C, D, E,* and *F*, his heirs, to recover a sum of money alleged to be due on a roka, alleging that they were in possession of *B*'s estate, and praying for a decree against the estate upon that footing. It was not disputed that the debt would have been barred by limitation but for a part payment made by *C*, and endorsed by him on the back of the roka. *D, E,* and *F* were no parties to such payment, and it was found not to have been made with their consent. The first Court, considering that collusion existed between *A* and *C*, and having regard to the fact that *C* did not dispute his liability, gave *A* a decree for the full amount of the debt against *C* without finding whether the roka was genuine or not, and held that the shares of *D, E,* and *F* in *B*'s estate were not liable for any portion of the debt. *A* accepted this decision and did not appeal. *C* appealed on the ground that he [illegible] only under the

[illegible]

C's share. *D, E,* and *F* were not made parties to that appeal. *A* then preferred a special appeal to the High Court, making *D, E,* and *F* parties. *Held* that, under the circumstances of the case, and having regard to the rule of Mahomedan law, *A* was not entitled to a decree against *C* for more than two-fifths of the debt. *Held* further that, applying the principle of justice, equity, and good conscience to the case, inasmuch as *A* was a Hindu, it would not, under the circumstances of the case, be equitable to hold *C* liable for the whole of the debt. BUSSUNTERAM MARWARY *v.* KAMALUDDIN AHMED [I. L. R., 11 Calc., 421

14. ——— *Money due by a deceased Mahomedan—Suit by a creditor against only one of the heirs of the deceased—Right of suit —Debtor and creditor.*—A suit for money due by a deceased Mahomedan lies against one of his heirs in respect of his share in the property left by the deceased, though it may not bind the share of another heir. *Assamathemunissa Bebee v. Roy Lutchmeeput Singh, I. L. R., 4 Calc., 142,* and *Jafri Begam v. Amir Muhammed Khan, I. L. R., 7 All., 822 (827),* followed. *Quære*—Whether, there having been no division of the estate, the share of the heir sued is liable for the whole debt of the deceased. *Bussunteram Marwary v. Kamaluddin Ahmed, I. L. R., 11 Calc., 421,* and *Pirthi Pal Singh v. Husaini Jan, I. L. R., 4 All., 361,* referred to. AMBASHANKAR HARPRASAD *v.* ALI RASUL [I. L. R., 19 Bom., 273

15. ——— *Mahomedan family—Mortgage by Mahomedan father—Suit by mortgagee against minor son represented by mother after mortgagor's death and decree for possession—Some of the heirs not parties—Subsequent suit by daughters as heirs of mortgagor for redemption.*—When in a mortgage suit the debt is due from the father, and after his death the property is brought to sale in execution of a decree against the widow or some of the heirs of the mortgagor, and the whole property is sold, then the heirs not brought on the record cannot be permitted to raise the objection that they are not bound by the sale simply because they are not parties to the record. This principle of law applies as much to a Mahomedan family as to a Hindu family governed by the Mitakshara law. *Hari v Jairam, I. L. R., 14 Bom., 597,* and *Khurshetbibi v. Keso, I. L. R., 12 Bom., 101,* referred to and followed. One *N* mortgaged his property in 186[illegible] to *B* and died in 18[illegible]4, leaving a widow, a son, and two daughters. In 1881, *B* (the mortgagee) sued the minor son, represented by his mother, for possession as owner under the gahan lahan clause and got a decree on the 20th September 18[illegible], and obtained possession in

MAHOMEDAN LAW—DEBTS—*concluded.*

1865 To this suit the daughters of *N* were not parties. *B* held the land till 1887, and then sold it to *S*. In 1893 *N*'s daughters brought this suit against *B* and *S* to redeem the mortgage of 1862, contending that they were not bound by *B*'s suit in 1864, not having been parties to it. *Held* that the plaintiffs could not redeem. They were bound by the decree obtained by the mortgagee in 18 4. DAVALAYA *v.* BHIMAJI DHONDO

[I. L. R., 20 Bom., 338

16. ———— Power of alienation of heir —*Executor—Purchaser from heir.*—*A*, a Mahomedan died, being indebted to *B* in a sum of money. *B* sued the heirs of *A* for the amount and obtained a decree. Before *B* obtained his decree, the heirs of *A* had mortgaged the estate of *A* to *C*. The property was put up to sale in execution of *B*'s decree, and *B* became the purchaser, and now sued to obtain possession from *C*. *Held* that the mere fact of the property having once belonged to the estate of *A* did not entitle *B* to follow it in the hands of *C*, so as to enable him to recover possession without redeeming. The heir of a Mahomedan may, as executor, sell a portion of the estate of the deceased, if necessary, for the payment of debts; and such sale will not be set aside if the purchaser acted *bonâ fide*. ENAYET HOSSEIN *v.* RAMZAN ALI

[1 B. L. R., A. C., 172: 10 W. R., 216

See HASAN ALI *v.* MEHDI HUSAIN

[I. L. R., 2 All., 533

17. ———————— *Sale for debts of father.*—*M*, a Mahomedan, inherited certain property from his father, which, while he was a minor, his mother sold to the defendant, in good faith, for the discharge of a debt adjudged to be due to the defendant by *M*'s father. *M*, when he became of [illegible] sued [illegible] sale [illegible] ving [illegible] ssert, [illegible] hout tendering payment of the debt. *Held* also that, even if Mahomedan law were applied, and *M*'s mother was not legally competent to sell his property in the assumed character of his guardian, the plaintiff was bound to pay the debt due from *M*'s father to the defendant before he could claim, by avoidance of the sale in question, the possession of the property in suit. SAHEE RAM *v.* MAHOMED ABDUL RAHAMAN . . . 6 N. W., 238

18. ———— Liability for assets—*Evidence of receipt of assets.*—Where it is sought to fix a person under the Mahomedan law with liability for the debt of a person deceased, by reason of the receipt of assets, it is incumbent on the creditor to give some evidence of assets having been received. FUZEELUTOONISSA *v.* HOOSH[illegible]TOONISSA

[Marsh., 218: 1 Hay, 559

MAHOMEDAN LAW—DIVORCE.

1. ———— Validity of divorce—*Release of dower by wife—Evidence of divorce.*—According to the Mahomedan law, the non-payment by the wife of the consideration for a divorce does not invalidate the divorce. The divorce is the sole act of the husband, though granted at the instance of the wife, and purchased by her. The kholnamah, or the deed securing to the husband the stipulated consideration, does not constitute the divorce, but assumes and is founded upon it. The divorce is created by the husband's repudiation of the wife and the consequent separation. The husband having distinctly alleged a divorce by khola, and relied on two instruments,—one an ibranamah (or deed of voluntary release by the wife of her denmohr or dowry) to which there was no satisfactory proof that she ever gave her assent with a knowledge of its contents, and a kholanamah (surrendering the wife's settlement) obtained from her mother by means of cruelty and ill-usage practised on her daughter, to confirm the ibranamah,—*Held* that instruments so obtained could have no legal effect when used as a defence against the wife's claim to her dowry. BUZL-UL-RUHEEM *v.* LUTEEFUTOONNISSA

[1 W. R., P. C., 57: 8 Moore's I. A., 379
1 Ind Jur., O S., 1

2. ———— Evidence of divorce—*Husband's statement.*—The Mahomedan law does not provide for the nature of the evidence required to prove a divorce. *Quære*—Whether the husband's statement that he has divorced his wife is sufficient proof of the fact. BUKSH ALI *v.* AMEERUN BEBEE

[2 W. R., 208

3. ———————— *Necessity of written document.*—Although writing is not necessary [illegible] homedan [illegible] persons [illegible] rights [illegible] by the [illegible]

4. ———————— *Deed of divorce signed in absence of wife, Validity of.*—An instrument of divorce signed by the husband in the [illegible]

5. ———————— *Marriage.*—Where a Mahomedan was shown to have been duly married, her subsequent divorce should not be presumed only from the fact of her husband having taken another woman to live with him, in consequence of which his wife left his house and went to live [illegible]

6. ———— Right to leave husband—*Man taking another wife.*—A Mahomedan in the kubinnamah or deed of dower on his marriage with *S* stipulated that he should not take a second wife without the permission of *S*. *Held* that *S* was not

MAHOMEDAN LAW—DIVORCE —*continued.*

entitled to leave him upon his taking a second wife without her permission. MOHABUTH ALLY *v.* MYMONISSA . . . . . Marsh., 361

S. C. MYMONISSA *v.* MOHABUTH ALLY [2 Hay, 404

7. ———— Right to divorce—*Suit by wife for divorce—Agreement for divorce.*—A husband entered into a private agreement with his wife authorizing her to divorce him upon his marrying a second wife during her life, and without her consent. *Held* that the Mahomedan law sanctioned such an agreement, and that the wife, on proof of her husband having married a second time without her consent, was entitled to a divorce. BADARANISSA BIBEE *v.* MAFIATTALA [7 B. L. R., 442: 15 W. R., 555

8. ———— Mode of divorce—*Charge of adultery—Ill-usage.*—A charge of adultery by a Mahomedan against his wife does not operate as a divorce, though, if false, it might be an item of ill-

answer to his claim. Ill-treatment by him and his second wife would justify the first wife in leaving him JAUN BEEBEE *v.* BEPAREE . 3 W. R., 93

9. ———— *What amounts to divorce—Revocable divorce.*—Under Mahomedan law, no special expressions are necessary to constitute a valid divorce, nor, except when the repudiation is final, need the words be repeated thrice. If the divorce pronounced is liable to be, but is not, revoked within the period of iddat, it becomes final. IBRAHIM *v.* SYED BIBI . I. L. R., 12 Mad., 63

10. ———— *Divorce in absence of wife*—Suit by a Mahomedan female against her husband for maintenance Defendant pleaded that he had divorced the plaintiff on the 8th January 1862. Both the lower Courts found that no divorce had taken place upon the following facts. Defendant

Trichinopoly, made a written declaration in the shape of a letter to plaintiff to the effect that he had divorced

tion into one sentence seems, on the authorities, not to affect the legality of the repudiation, although some doctors consider the process immoral. SHERIF SAIB *v.* USANABIBI AMMAL . . . 6 Mad., 452

11. ———— *Khoola divorce*—Where a Mahomedan woman claimed a divorce from her husband on grounds which she failed to establish, but the husband, at the suggestion of the Court,

MAHOMEDAN LAW—DIVORCE —*continued.*

ODAKEL BEYAKUTTI UMAH [I. L. R., 3 Mad, 347

12. ———— *Wife's right of*

ASHRUF ALI *v.* ASHAD ALI . 16 W. R., 260

13. ———— *Divorce by wife.*—Under the Mahomedan law, a husband may give his wife the power to divorce herself from him accord-

14. ———— *Pronunciation of word "talak" by husband*—The mere pronuncia-

form by a man against a woman who is not his wife dissolves the marriage, though he pronounces it under a belief that she is not his wife. FURZUND HOSSEIN *v.* JANU BIBEE I. L. R., 4 Calc., 588

15. ———— *Divorce by one acting on compulsion from threats*—According to Mahomedan law, the divorce of one acting upon compulsion from threats is effective IBRAHIM MULLA *v.* ENAYETUR RUHMAN [4 B. L. R., A. C., 13: 12 W. R., 460

16. ———— *Repudiation by ambiguous expression—Custody of minor children.*—Where a Mahomedan said to his wife when she insisted against his wish on leaving his house and going to that of her father, that if she went she was his paternal uncle's daughter, meaning thereby

attained the age of puberty. HAMID ALI *v.* IMTIAZAN . . . I. L. R., 2 All., 71

17. ———— *Zihar—Mutta form of marriage.—Quære*—Whether the form of divorce called zihar may be exercised in the mutta

MAHOMEDAN LAW—DIVORCE —*continued.*

form of marriage. IN THE MATTER OF THE PETITION OF LUDDUN SAHIBA. LUDDUN SAHIBA *v.* KAMAR KUDDER

[I. L. R., 8 Calc., 736: 11 C. L. R., 237

18. ———— *Khoja Mahomedans—Custom*—Custom as to divorce among Khoja Mahomedans of the Sunni sect considered IN RE KASAM PIRBHAI 8 Bom., Cr., 95

19. ———— *Shiah school—Mutta marriage—Gift of term*—In a suit brough by a Mahomedan of the Shiah sect against his wife belonging to the same persuasion, for a declaration that the relationship of husband and wife had terminated, and that he was not liable to pay maintenance to her, which he had been directed to do by an order passed under the provisions of the Code of Criminal

the Mahomedan law the consent was unnecessary, the Court was bound, in administering justice, equity, and good conscience, to modify the strict law in this respect *Held* that, although the ordinary law of divorce does not exist in respect of marriages by the mutta form, they can nevertheless be terminated

MAHOMED ABID ALI KUMAR KADER *v.* LUDDEN SAHIBA . I. L. R., 14 Calc., 276

20. ———— Effect of divorce—*Irreversible divorce.*—According to Mahomedan law, a

21. ———— *Talak biddat—Husband and wife—Order for maintenance upon husband—Effect upon order—Presidency Magistrate's Act, IV of 1877, s. 234—Borah Mahomedans*

IN RE ABDUL ALI ISHMAILJI

[I. L. R., 7 Bom., 180

So with an order made under Act XLVIII of 1860 (Police Amendment Act), s. 10 IN RE KASAM PIRBHAI . . . . 8 Bom., Cr., 95

MAHOMEDAN LAW—DIVORCE —*concluded.*

22. ———— *Maintenance of wife, Order for—Criminal Procedure Code, 1872,*

wife's "iddat." *Abdur Rohoman v. Sakhina, I. L. R., 5 Calc., 558, In re Kasam Pirbhai, 8 Bom., Cr., 95;* and *Luddun Sahiba v. Kamar Kadar, I. L. R., 8 Calc., 736; Madras High Court Proceedings, 2nd December 1879,* referred to and followed The Mahomedan law of divorce relating to the maintenance of a divorced wife during her "iddat" referred to IN THE MATTER OF THE PETITION OF DIN MAHOMED . . . I. L. R., 5 All., 226

MAHOMEDAN LAW—DOWER.

See DEBTOR AND CREDITOR.
[I. L. R., 8 All., 178

See EVIDENCE ACT, s. 32
[I. L. R., 19 Calc., 689
L. R., 19 I. A., 157

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.
[I. L. R., 18 All., 400

See RESTITUTION OF CONJUGAL RIGHTS.
[I. L. R., 8 All., 149
I. L. R., 17 Calc., 670

1. ———— Dower, Proof of claim to—*Deed of dower, Necessity of—Verbal statement.*—A deed of dower is not in all cases indispensable to the truth and validity of a claim for dower *Semble*—There appears to be no reason why a mukzernamah or statement made (not on oath before the Court) by parties in a position to know the facts should not have a certain weight JUMEELA *v.* MULKA . . . . 1 Ind. Jur., N. S., 28

S. C. MULLEEKA *v.* JUMEELA . 5 W. R., 23

S. C. on appeal to Privy Council. MULLEEKA *v.* JUMEELA
[11 B. L. R., 375: L. R. I. A., Sup. Vol., 135

TAJOO BEEBEE *v.* NOORUN BEEBEE . 1 W. R., 31

2. ———— *Verbal contract for dower—Customary dower, Evidence of amount of*—A verbal contract of dower for a large sum is admissible only if proved by most clear and satisfactory evidence. A customary dower must be proved by showing a custom of the women of the wife's family to receive, rather than of the men of the husband's family to pay, a certain dower; the Mahomedan dower being the consideration paid by the bridegroom for the marriage, and therefore regulated by the position and conduct of the bride, especially as Mahomedan men often contract most unequal marriages, though the means and position of the bridegroom must

MAHOMEDAN LAW—DOWER
—*continued.*

not altogether be excluded from consideration. NUJEEMOODDEEN AHMED *v.* HOSSEINEE
[4 W. R., 110

3. ——— *Oral evidence in proof of claim.*—The very best description of oral evidence is absolutely necessary to support a claim for dower where no kabinamah is produced. HUSEENA *v.* HUSMUTOONISSA . 7 W. R., 495

ABDOOL JUBBAR CHOWDHRY *v.* COLLECTOR OF MYMENSINGH . . . . 11 W. R., 65

4. ——— Deed in lieu of dower—*Possession—Validity of deed.*—According to the Mahomedan law, possession under a deed of bye-mokasa executed in lieu of dower is not necessary to its validity. NUSEEBOONISSA *v.* DANUSH ALI
[3 W. R., 133

5. ——— Payment by husband to wife—*Presumption of nature of payment—Gift.*—Where a husband granted a dower of five lakhs of Lucknow rupees and subsequently directed Sicca rupees 4,50,000 Company's paper to be set aside for her,—*Held*, under the circumstances, that this was to be presumed to be a payment on account of dower, and not a gift. IFTIKARUNISSA BEGUM *v.* AMJAD ALI KHAN . 7 B. L. R., P. C., 643

6. ——— Right to dower.—Where a Mahomedan (Shiah), on his marriage, being in poor circumstances, fixed a "deferred" dower of R51,000 upon his wife, and died without leaving sufficient assets to pay such dower, and his wife sued to recover the amount of such dower from his estate,—*Held* by STUART, *C.J.* (PEARSON, *J.*, dissenting), that, it being nowhere laid down absolutely and expressly by any authority on the Mahomedan law that [illegible]

[illegible] that a Mahomedan widow was entitled to the whole of the dower which her deceased husband had on marriage agreed to give her, whatever it might amount to, and whether or not her husband was comparatively poor when he married, or had not left assets sufficient to pay the dower-debt. SUGRA BIBI *v.* MASUMA BIBI . I. L. R., 2 All., 573

7. ——— *Omission to claim dower in legacy.*—According to Mahomedan law, if the widow assents to any person's taking a legacy without putting forward her claim to dower, she cannot afterwards retract her assent. REZZA HOSSEIN *v.* IFATOONNISSA . . 24 W. R., 564

8. ——— Nature of dower—*Dower not specified.*—According to Mahomedan law, dower is presumed to be prompt in the absence of express contract, and may be enforced at any time. TADIYA *v.* HASANEBIYARI . . . . 6 Mad., 9

MAHOMEDAN LAW—DOWER
—*continued.*

9. ——— *Suit for dower—Dower prompt or deferred—Presumption.*—According to Mahomedan law, dower, being consideration for marriage, is, unless payment of the whole or part of it is expressly postponed, presumed to be prompt and exigible on demand. *Tadiya v. Hasanebiyari, 6 Mad., 9*, followed. MASTHAN SAHIB *v.* ASSAN BIVI AMMAL . I. L. R., 23 Mad., 371

10. ——— *Exigible dower, No amount specified as.*—*Held* where no specific amount of dower has been declared exigible, and as there was no clear evidence of what was customary, that the Assistant Judge in appeal committed no [illegible]
n[illegible]
h[illegible]
h[illegible]

[2 Bom., 307: 2nd Ed., 291

11. ——— *Mode of payment if divorced—Inheritance.*—Among Mahomedans deferred dower becomes payable on the dissolution of the marriage, whether by divorce or by the death of either of the parties. According to Mahomedan law, where the heirs of a woman claimed dower from her husband, which was moajjal or deferred, and not due or payable till her death, their claim was a simple money claim founded solely on the contract made by [illegible]

S. C. KHYRATUN *v.* AMANI . 11 W. R., 212

MEHRAN *v.* KUBIRAM
[6 B. L. R., 60 note: 13 W. R., 49

12. ——— *Prompt and deferred dower—Custom.* Under Mahomedan law, when on marriage it is not specified whether a wife's dower is prompt or deferred, the nature of the dower is not to be determined with reference to custom, but a portion of it must be considered prompt. The amount to be considered prompt must be determined with reference to the position of the wife and the amount of the dower, what is customary being at the same time taken into consideration. TAFFIK-UN-NISSA *v.* GHULAM KAMBAR I. L. R., 1 All., 506

13. ——— Non-payment of prompt dower, Effect of—*Husband and wife—Shiah—*[illegible] woman of the [illegible] f the [illegible] o her [illegible] s not [illegible] *Held* [illegible] his wife, [illegible] that the [illegible] having [illegible] Sunni [illegible] been paid, the suit was not maintainable [illegible] law. NASRAT HUSAIN *v.* HAMIDAN
[I. L. R., 4 All., 205

MAHOMEDAN LAW—DOWER —*continued*

14. ———— *Suit for restitution of conjugal rights—Custom—Prompt and deferred dower.*—When a Mahomedan sues his wife for restitution of conjugal rights, such suit is to be determined with reference to Mahomedan law, and not with reference to the general law of contract. Under Mahomedan law, if a wife's dower is "prompt," she

marriage. When at the time of marriage the payment of dower has not been stipulated to be "deferred," payment of a portion of the dower must be considered "prompt." The amount of such portion is to be determined with reference to custom. Where there is

15. ———— *Restitution of conjugal rights.*—A Mahomedan cannot, according to Mahomedan law, maintain a suit against his wife for restitution of conjugal rights, even after such consummation with consent as is proved by cohabitation for five years, where the wife's dower is "prompt" and has not been paid. *Abdool Shukoor v. Raheem-oon-nissa, 6 N. W., 94,* followed. WILAYAT HUSAIN *v.* ALLAH RAKHI

I. L. R., 2 All., 831

16. ———— *Marriage—Suit for restitution of conjugal rights—Plea of non-payment—Form of decree.*—According to the Mahomedan

MAHOMEDAN LAW—DOWER —*continued.*

rule allowing the plea of non-payment of dower is to enable the wife to secure payment. Her right to resist her husband so long as the dower remains unpaid is analogous to the lien of a vendor upon the

ceases to exist after consummation, unless at such time she is a minor, or insane, or has been forced, in which case her father may refuse to surrender her until payment. It cannot in any case be pleaded so

be regarded as prompt, in accordance with the principle recognized by Courts of equity under the general category of compensation or lien, when pleaded by a defendant in resistance or modification of the plaintiff's claim. *Buzloor Ruheem v. Shumsoon-nissa Begum, 11 Moore's I. A., 551; Mulleeka v. Jumeela, 11 B. L. R., 375; Khajooroonissa v. Ryeesoonissa, L. R., 2 I. A., 235; Nawab Bahadoor Jung Khan v. Uzeez Begum, N. W., S. D. A., 1843, 46, p. 180; Jaun Bebee v. Bepsree, 3 W. R., 93; Gatha Ram Mistree v. Moohita Kochin Atteah Doomoonee, 14 B. L. R., 298,* and *Eidan v. Mazhar Husain, I. L. R., 1 All., 483,* referred to. *Abdool Shukkoor v. Raheem-oon-nissa, 6 N. W., 94; Wilayat Husain v. Allah Rakhi, I. L. R., 2 All., 831; Nasrat Husain v. Hamidan, I. L. R., 4 All., 205;* and *Nasir Khan v. Umrao, Weekly Notes,*

whole of the dower debt in Court. It appeared that the defendant's dower had been fixed without any specification as to whether it was to be wholly or partly prompt. It also appeared that she had attained *majority before the marriage, and that* she had cohabited with the plaintiff for three months after marriage, and there was no evidence that she had ever demanded payment of her dower before the suit was filed, or that she had refused cohabitation on the ground of non-payment. Besides the plea already mentioned, she also relied upon allegations of divorce and cruelty, but these allegations were found to be untrue. The lower Appellate Court dismissed the suit, holding that, inasmuch as the plaintiff had not paid the dower-debt at the time when he brought his suit, he had no cause of action under the provisions of the Mahomedan law. *Held* by the Full Bench that the lower Appellate Court's view of the Mahomedan law relating to conjugal rights and the husband's obligation to pay dower was erroneous; and that the plaintiff, under the circumstances of the case, had a right to maintain the suit. ABDUL KADIR *v.* SALIMA . I. L. R., 8 All., 149

MAHOMEDAN LAW—DOWER *—continued.*

17. ———— *Suit by husband for restitution of conjugal rights—Duty of wife to cohabit with husband—Non-payment of dower.*—Suit by a Mahomedan to recover possession of his wife, the defendant. Defendant pleaded that she was not bound to return to plaintiff until plaintiff paid R42 prompt for dower, which plaintiff promised to pay by the marriage contract and had not paid. The lower Courts, following *Eidan* v. *Mazhar Husain, I. L. R., 1 All., 483,* dismissed the suit. *Held* on appeal that defendant could not refuse cohabitation on the plea that her dower had not been paid *Abdul Kadir* v. *Salima, I. L. R., 8 All., 149,* followed. KUNHI *v.* MOIDIN

[I. L. R., 11 Mad., 327

18. ———— Suit for dower—*Cause of action.*—In a suit by a Mahomedan widow to recover from the heirs of her husband the amount of dower which became due to her after her husband's death, the cause of action must be deemed to have arisen at the time when she was ejected by order of Court from the property left by her husband, and which she held as security for the satisfaction of her dues SOORMA KHATOON *v* ATTAFFOONNISSA KHATOON

[2 Hay, 210

19. ———— *Exigible dower* ...

preferred by heirs for their mother's mojal dower will be in time if brought within twelve years of the mother's death Mowajal or non-exigible or deferred dower is claimable on the dissolution of the marriage either by death or divorce. Shares of dower when received by the legal inheritors thereof cease to be dower, and become part of the recipient's estate. HOSSEINOODDEEN CHOWDHRY *v.* TAJUNNISSA KHATOON . . . . . W. R., 1864, 199

20. ———— *Prompt and deferred dower.*—A Mussalman, on his marriage, entered into a written agreement (unregistered) with his wife to pay her a lakh of rupees, one fourth as prompt (mojal) dower, the remainder as deferred (mowajal) dower. A separation occurred between the husband and wife, but there was no divorce During the separation, on 3rd May 1861, the wife ... the ... the ... laim ... as a pauper was rejected on 27th January 1862. The husband died on 30th August 1867. On the 13th ...

not arise until the husband's death. But the cause of action in respect of prompt dower arises upon demand by the wife and refusal by the husband. KHAJARANNISSA *v.* RISANNISSA BEGUM

[5 B. L. R., 84 13 W. R., 371

MAHOMEDAN LAW—DOWER *—continued.*

21. ———— *Limitation—Divorce.*—Where dower is "prompt," limitation does not begin to run until the dower is demanded or the marriage is dissolved by death or otherwise. The ...

dower before the repudiation has become irrevocable, or the dower has been demanded. MULLEEKA *v.* JUMEELA . . . 11 B. L. R., 375

[L. R., I. A., Sup. Vol., 135

S. C. in lower Court, JUMEELA *v.* MULLEEKA

[W. R., 1864, 252: 5 W. R., 23

1 Ind. Jur., N. S., 28

22. ———— *Exigible dower —Demand—Application to sue in formâ pauperis —Cause of action.*—The prompt or exigible dower of the Mahomedan law may be regarded as a debt always due and demandable during the subsistence of the ... On a ...

... VIII of 1859, by a Mahomedan woman ... sue her husband for exigible dower *in formâ pauperis,* may be taken to express her intention of bringing an action for dower only if she obtains leave to do so as a pauper. Until she has the Court's permission to sue, her application does not amount to a demand by way of action. A counter-petition by the husband objecting to the pauper suit being allowed, and denying ... does not alter the ...

SAIFOOLLA KHAN

[15 B. L. R., 306: 24 W. R., 163

L. R., 2 I. A., 235

Reversing the decision that the suit, as regarded the prompt dower, was barred by limitation in KHAJARANNISSA *v.* RISANNISSA BEGUM

[5 B. L. R., 84: 13 W. R., 371

23. ———— *Demand—Limit-* ... by a deed of ... n sum ... it im- ... settle- ... e life- ... took ... laim.

Held by the Sudder Dewanny Court, and such decision ... that the ...

MAHOMEDAN LAW—DOWER
—*continued.*

years had elapsed from the date of the deed and the time the widow set up her claim for dower, the claim was not barred by limitation AMEER-OON-NISSA *v.* MORAD-OON-NISSA . . 6 Moore's I. A., 211

24. ——— ——— *Genuineness of kabinamah—Right to sue without certificate under Act XXVII of 1860, s 3—Prompt and deferred dower.*—The appellant, one of the royal family of Oudh, sued his father, the respondent, for R50,000 as his share of the dower alleged to have been settled on his mother, the late Oomrao Begum, who left as her heirs her husband (the appellant), her only son, and three daughters who were made joint defendants The plaintiff's case was that the dower being unpaid, he, as co-heir, became entitled to three-tenths, but, having regard to the circumstances of the husband,

[illegible]

KHAN . . . . 19 W. R., P. C., 315

25. ——— Lien for dower—*Fixing of* [illegible]

[illegible]

26. ——— *Lien of widow against heir—Amount of dower unascertained.*—In a suit against the two widows of a deceased Mahomedan, who had obtained a certificate of administration to his estate under Act XXVII of 1860, the plaintiff claimed a 12 annas share of the estate, and prayed for the possession with mesne profits from the death of the deceased The widows claimed to have their dower first satisfied. The amount of the dower had not been ascertained. *Held* that the widows had a lien for their dower on the estate, and the plaintiff *was not entitled to recover possession so long as any* portion of the dower remained unsatisfied. This was so though the amount of the dower was unascertained. AHMED HOSSEIN *v.* KHADIJA

[3 B. L. R., A. C., 28 note: 10 W. R., 369

TAJIM *v.* WAHED ALI . 22 W. R., 118

NOUSHA BEGUM *v.* UMRAO BEGUM 7 N. W., 60

ATAHUR ALI *v.* ALTAF FATIMA

[10 W. R., 370 note

27. ——— *Mahomedan widow—Widow's heir—Determination of amount of dower.*—A Mahomedan widow lawfully in possession of her husband's estate occupies a position

[illegible]

widow herself, and where the decree for possession passed in their favour would remain undisturbed [illegible]

28 ——— *Consent of heirs to possession of widow—Suit by heir claiming* [illegible]

perty of her deceased husband, having obtained such possession lawfully and without force or fraud, and her dower or any part of it is due and unpaid, she is entitled as against the other co-heirs of her husband to retain possession of such property until her dower-debt is paid It is immaterial to such widow's right to retain possession that such possession was obtained originally without the consent of the other co-heirs. *Bachun v. Hamid Hossein, 14 Moore's I. A., 377; Aziz ullah Khan v. Ahmed Ali Khan, I. L. R., 7 All. 353;* and *Tajim v. Wahed Ali, 22 W. R., 118,* referred to. AMANI BEGAM *v.* MUHAMMAD KARIM ULLAH KHAN

[I. L. R., 16 All., 225

MAHOMEDAN LAW—DOWER
—*continued.*

Held in the same case on appeal under the Letters Patent by EDGE, *C.J.*, and BANERJI, *J.*—When a Mahomedan widow is in possession, and has been for some time in undisturbed possession, of property which had been of her husband in his lifetime, and dower is admitted or proved to be due to her, it lies upon the heir who claims partition without payment of his proportion of dower to prove that the Mahomedan widow was not let into possession by her husband in lieu of dower, or did not obtain possession in lieu of dower after her husband's death with the consent or by the acquiescence of the heirs MUHAMMAD KARIM-ULLAH KHAN *v.* AMANI BEGAM . I. L. R., 17 All., 93

29. ———— *Law in Oudh—Punjab Code*—The widow of a Mahomedan in possession of her husband's estate under a claim of dower

and 1860), the dower mentioned in a marriage contract (instead of being enforced as an absolute deed

KUDR
[2 W. R., P. C., 55: 10 Moore's I. A., 252

30 ———— The heir of a deceased Mahomedan having dispossessed the widow of deceased, who was in possession in lieu of dower, takes the estate subject to her lien for the amount of her dower. AMED ALI *v.* SAFFIHAN
[3 B. L. R., A. C., 175

So does a purchaser from her son, and the purchaser cannot dispossess the widow in possession in lieu of dower BUNDAY ALI KHAN *v.* CHCTEE BIBEE . . . . 1 Agra, 273

31 ———— *Law in Oudh—Discretionary power of the Courts over the amount of dower—The Oudh Laws Act (XVIII of 1876),*

Laws Act (XVIII of 1876), s 5. The Judicial Committee, having examined the grounds on which each of the Courts had exercised its discretionary power, considered the reason given by the first Court to be sound and restored the decree. SULEMAN KADR *v.* MEHDI BEGUM SURREYA BAHU
[I. L. R., 21 Calc., 135
L. R., 20 I. A., 144

32 ———— *Oudh, Law of, relating to reduction in amount of dower—Determination of amount of deferred dower recoverable from representatives of deceased husband married in, but a non-resident of, Oudh, not affected by law of that Province—Usage having force of law.*—

MAHOMEDAN LAW—DOWER
—*continued.*

A Mahomedan, a resident in Patna, since deceased, married the plaintiff, while he was for a time in Lucknow where she lived. Upon her claim, as his widow, for her deferred dower, it was found to have been contracted for at the amount alleged by her. The question of the amount of her dower was held to be determinable without reference to a usage having the force of law in Oudh, rendering dower reducible in certain cases by the Court. The place of celebration of the marriage did not make this applicable. ZAKERI BEGUM *v.* SAKINA BEGUM
[I. L. R., 19 Calc., 689
L. R., 19 I. A., 157

33. ———— *Effect of Oudh Laws Act (XVIII of 1876), s. 5.*—Advantage of the Oudh Laws Act, XVIII of 1876, s. 5, pointed out, as giving the Courts discretion to fix an amount of dower

COLLECTOR OF MORADABAD *v.* HARBANS SINGH
[I. L. R., 21 All., 17

34. ———— *Widow in possession in lieu of dower—Charge on estate for*

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put into possession of his share of the estate Payment of the widows, like every other debt, must be made before the estate can be distributed amongst the heirs. BALUND KHAN *v.* JANEE 2 N W., 319

See UFZOOL BEGUM *v.* LADLEE BEGUM
[2 N. W., 325

and IMDAD HOSSEIN *v.* HOSSEINEE BUKSH
[2 N. W., 327

35. ———— *Lien on estate of husband*—Where the widow of a Mahomedan obtained actual and lawful possession of the estates of her husband under a claim to hold them as one of the heirs and for her dower, it was held that she was entitled to retain possession until her dower was satisfied, with the liability to account to those entitled to the property subject to the claim for the profits received. BACHUN *v.* HAMID HOSSEIN
[10 B. L. R., 45: 14 Moore's I. A., 377
17 W. R., 113

MAHOMEDAN LAW—DOWER —*continued.*

36. — — — *Right of widow to possession against heirs*—A widow, who is not entitled to more than her legal share in her husband's estate, has no right to the exclusive possession of the entire estate, unless it be found that she was put in possession of the entire estate either by her husband or by the consent of the other heir or heirs in lieu of dower AMEERUN *v* RUHEEMUN [2 Agra Pt. II, 162

Where it is so found, she has such right KUREEM BUKSH KHAN *v* DOOLHIN KHOORD 15 W. R., 82

37. ——— *Hypothecation—Beng. Reg VII of 1832.*—The widow's claim for dower under the Mahomedan law is only a debt against the husband's estate It may be recovered from the heirs to the extent of assets come to their hands It does not give the widow a lien on any spe-

is not hypothecation without seisin, but a creditor, whether widow or any other creditor, if in possession of the husband's property with the consent of the debtor or his heirs, might hold over until the debt is

Regulation VII of 1832, the case not being one of succession, inheritance, marriage caste, or religious usage, but simply one of contract WAHIDUNNISSA *v.* SHUBRATTUN . 6 B. L. R., 54 · 14 W. R., 239

38. ——— *Assignment to wife in lieu of dower—Subsequent decree affecting*

shares by any subsequent decree would not affect the assignment, and if at all affected, she (assignee) would be entitled to have the same extent of land made up

[2 Agra, 39

session of the estate as against the heirs, but must sue them regularly for the amount due to her. SELAMUT *v.* MOWLA BUKSH . . . 5 W. R., 194

40 ——— *Dispossession of widow—Wasilat.*—The widow of a Mussulman, in possession of her husband's estate under a claim of

MAHOMEDAN LAW—DOWER —*continued.*

dower, has a lien upon it, and is entitled to possession as against those entitled as heirs, till her claim is satisfied Should the widow in such a case be deprived of possession by a decree in favour of heirs who take with notice of her claim to dower, and more particularly where her right to sue has been expressly reserved, the heirs take subject to a lien of which the property is not divested by the decree. *Held* by the Appellate Bench that in a case in which a Mahomedan widow had, after many years of possession as above, been compelled to make over one-sixth of her estate to her mother-in-law, and then sued her mother-in-law for one-sixth of her dower without

41. ——— *Relinquishment by son in favour of mother for her unpaid dower*—The Privy Council reversed so much of the decision of the High Court as ruled that the effect of an arrangement between the plaintiff and her son, by which the son relinquished his share in his late father's property, was not that the mother took an absolute interest in the property in satisfaction of her claim for unpaid dower, but that she should have

ferential charge on the estate, constitutes a debt payable *pari passu* with the demands of other creditors. HAMEEDA *v.* BUDLUN 17 W. R., P. C., 525

42. ——— *Widow out of, or in wrongful, possession.*—Where she is not in possess-

MEERUN *v.* NAJEEBUN . . . 2 Agra, 335

43. ——— *Right of widow deprived of estate by heir.*—Where a Mahomedan widow was improperly deprived of a portion of such estate under a decree in a suit by an heir of her

44. ——— *Inheritance—Transfer by widow in possession in lieu of dower—Right of purchaser—Heirs.*—*Held* that a purchaser of a deceased husband's estate from a Mahomedan widow, in possession thereof, pending payment of her dower, is not entitled to plead non-satisfaction of

MAHOMEDAN LAW—DOWER
—*continued.*

her dower-debt to a claim by her husband's heirs for their share of his inheritance, as the widow's right to dower is personal to herself and does not pass to a purchaser of the estate. *Bachan* v *Hamid Hossein, 10 B. L. R., 45,* and *Bazayet Hossein* v. *Dooli Chand, L. R, 5 I. A, 211,* referred to. ALI MUHAMMAD KHAN v. AZIZULLAH KHAN
[I. L. R., 6 All., 50

45. ———————— *Nature of widow's lien for dower.*—The lien which a Mahomedan widow whose dower is unpaid may obtain on lands which have belonged to her deceased husband is a purely personal right, and does not survive to her heirs. *Ali Muhammad Khan* v. *Azizullah Khan, I. L. R., 6 All., 50,* and *Ajuba Begam* v. *Nazir Ahmad, Weekly Notes (All) 1890, 115,* referred to. HADI ALI v. AKBAR ALI . I. L. R., 20 All., 262

46. ———————— *Right of mort-*

[illegible]

sold the property, and, buying it themselves, got into possession. The mortgagee then brought a suit to obtain from the widows the property which he had purchased. *Held* that until the widows brought their suit the property in *N*'s hands was not subject to a lien or charge in favour of them, and that it passed free from incumbrances to the mortgagee as a *bond fide* purchaser for valuable consideration. *Held* also that the plaintiff was entitled to so much of the property as was *N*'s share. BEGUM v. DOOLEE CHUND
[20 W. R., 93

47. ———————— *Widow taking possession against the consent of the other heirs.*—If a Mahomedan widow entitled to dower has not obtained possession of property of her deceased husband lawfully, that is, by contract with her husband, by his putting her into possession, or by

[illegible]

Wahid-un-nissa v. *Shahrattun, 6 B. L. R., 54; Bazayet Hossein* v. *Dooli Chund, I. L. R., 4 Calc., 402 L. R., 5 I. A., 211; Meerun* v *Najeebun, 2 Agra (1867), 335, Ali Muhammad Khan* v. *Azizul-lah Khan, I. L. R., 6 All., 50;* and *Mehrun* v. *Kubeerun, 13 W. R., 49: 6 B. L R., 60 note,* referred to. *Woomatool Fatima Begum* v. *Meerunmun-nissa Khanum, 9 W. R, 318; Ahmad Hossein* v. *Khodeja, 10 W. R, 369: 3 B. L. R., A C., 28 note;* and *Bolund Khan* v. *Janee, 2 N. W. (All., 1870), 319,* distinguished. AMANAT-UN-NISSA v. BASHIR-UN-NISSA . . . I. L. R., 17 All., 77

MAHOMEDAN LAW—DOWER
—*concluded.*

48. ———————— *Suit by heirs of Mahomedan widow for her dower—Alienation of property of the deceased husband by his heirs pendente lite.*—While a suit for the dower debt due to a Mahomedan widow was pending on behalf of her heirs, the heirs of her deceased husband mortgaged certain property which had been of the deceased in his lifetime. The heirs of a widow obtained a decree which could only be executed against the assets of the deceased husband. *Held* that this decree took priority over the mortgagee's decree and a sale held in execution thereof. *Bazayet Hossein* v. *Dooli Chand, I. L. R., 4 Calc., 402* YASIN KHAN v. MUHAMMAD YAR KHAN . I. L. R, 19 All, 504

49. ———————— *Mortgage by widow in possession in lieu of dower of immoveable property which had been of her husband.*—A Mahomedan widow in possession of immoveable property of her late husband in lieu of her dower has no power to mortgage such property. CHUHI BIBI v. SHAMS-UN-NISSA BIBI . . . I. L. R., 17 All., 19

50 ——— Power of widow to alienate share of which she is in possession in lieu of dower—*Suit to avoid alienation.*—*Held* that a widow in possession of the share of her deceased husband's heirs in lieu of dower is not competent to alienate it, and the heirs can sue for the avoidance of such transfer made by the widow. MAHOMED USSUDOOLLAH KHAN v. GHASHEEA BEEBEE
[1 Agra, 150

They cannot, however, claim possession before the dower is paid. AZEEMUN v. ASGUR ALI
[2 Agra, Pt. II, 167

51. ———————— *Share by right of inheritance.*—*Held* that a widow who is in possession of her husband's estate in lieu of her dower is not competent to alienate the whole estate permanently, but can only sell what belonged to her by right of inheritance. KUMMUR-OOL NISSA BEGUM v. MAHOMED HUSSUN . . . . 1 Agra, 287

52 — Power of mother in posses- [illegible] husband's [illegible]

and the sale can be invalidated, although the daughters may not be entitled to immediate entry upon their shares. GHUFOORUN BEBEE v MUSTUKEEM
[2 Agra, 300

53. ——— Purchase of property by wife out of money given on account of dower—*Husband and wife.*—Under the Mahomedan law, a wife may (except with fraudulent intent) purchase property as her own during her husband's lifetime with money given to her by him on account of dower. NASOO v. MAHATAB BEEBEE 4 W. R., 7

MAHOMEDAN LAW—ENDOWMENT.

See Custom . . . 1 Bom., 36

See Cases under Mahomedan Law—Mosque.

See Right of Suit—Charities and Trusts . I. L. R., 20 Calc., 810

1. ——— Creation of endowment—*Verbal endowment*.—According to Mahomedan law, a valid endowment may be verbally constituted without any formal deed. Shurbo Narain Singh *v.* Ally Buksh Shah . 2 Hay, 415

2. ——— *Charges on profits for definite period*.—The primary objects for which lands are endowed under the Mahomedan law are to

fits available for the purposes of the endowment, does not render an endowment invalid under the Mahomedan law. Muzhurool Huq *v.* Puhraj Ditarey Mohapattur . . . 13 W. R., 235

3. ——— *Words declaratory of appropriation—Motive*.—The chief elements of wukf are special words declaratory of the appropriation and a proper motive cause; and where the declaration is made in a solemnly, published document, the wukf is completed. Doyal Chund Mullick *v.* Keramut Ali . . . 16 W. R., 116

4. ——— *Lands set apart for support of mosque*.—The payment of expenses of a mosque out of the rents of certain property is not proof of itself that the property is endowed. Shurfoonnissa *v.* Koolsoom . . 25 W. R., 447

5. ——— *Grants for subsistence*.—Grants to an individual in his own right, and for the purpose of furnishing him with the means of subsistence, do not constitute a work for endowment. Kuneez Fatima *v.* Saheba Jan . 8 W. R., 313

6. ——— *Wukf—Construction of deed of endowment—Settlement on person and his descendants to three generations, and afterwards to charity—Appropriations of property by settlement*.—A Mahomedan settled a portion of his immoveable property as follows: "I have made wukf the remaining four annas in favour of my daughter *B* and her descendants, as also her descen-

of property on himself or his descendants, for a man to reduce himself to a state of absolute poverty. Mahomed Hamidulla Khan *v.* Lotful Huq

[I. L. R., 6 Calc., 744 : 8 C. L. R., 164

MAHOMEDAN LAW—ENDOWMENT—*continued*.

7. ——— *Wukf—Settlement on man and his descendants.—Semble*—To constitute a valid wukf according to Mahomedan law, it is not sufficient that the word "wukf" be used in

... a settlement of property upon himself and his descendants, which will keep such property inalienable by himself and his descendants for ever.

8. ——— *Wukf—Possession, Delivery of—Grant of endowed property*.—To con-

9 ——— *Wukf—Mutwali—Right to sue*.—A Mahomedan of the Shafi

heirs, on the extinction of both, to the heirs of the settlor. The settlor constituted himself the nazir or mutwalli (superintendent or trustee) of the estate during his life, and nominated *A* and *B* to act as such after his death with the consent of his wives.

medan law), not to the heirs or descendants of the settlor, but to the mutwallis (superintendents)

MAHOMEDAN LAW—ENDOWMENT
—continued.

Court on the application of the parties beneficially interested in the estate. *Quære*—Whether a wukf could be created for the purpose merely of conferring a perpetual and inalienable estate on a particular family without any ultimate express limitation to the use of the poor or some other inextinguishable class of beneficiaries. PHATE SAHEB BIBI *v.* DAMODAR PREMJI . I. L. R., 3 Bom., 84

10. ——————— *Charitable object —Subject of wukf—Shares in company.*—According to Mahomedan law, a wukf cannot be created of shares in a limited liability company. A wukf, the purpose of which is to create a mere family settlement without a charitable object, is invalid. *Abdul Gunne Kasam v. Hussen Miya Rahimtula, 10 Bom., 7,* and *Mahomed Hamidulla Khan v. Budrunissa Khatoon, 8 C. L. R., 164,* followed. FATIMA BIBEE *v.* ARIF ISMAILJEE BHAM . . 9 C. L. R., 66

11. ——————— *Wukf—Provisions for payment of debts and maintenance—Minor plaintiff—Guardian.*—A Mahomedan created a wukf of all his property, and appointed his minor grandson mutwalli, providing that during the mi-

the settlor's grandson and their male issue. In ...her, the ...a suit ...him, to ...suit the ...order of ...Judge, ...framed. ...ons for ...ukf was valid. LUCHMIPUT SINGH *v.* AMIR ALUM [I. L. R., 9 Calc., 176: 12 C. L. R., 23

12. ——————— *Grant to grantees and their aulad va ahfad—Meaning of the word "ahfad"—Wukf—Turlyat and sajjadanashin, Right of females to hold the offices of.*—A certain village was granted by the Mogul Government in inam to two persons and their "aulad va ahfad" for the maintenance of a durga (mausoleum) of a pir (saint). The plaintiff and the defendant were the descendants of the original grantees. In 1878 the plaintiff sued the defendant for the recovery of the profits of a one-fourth share in the inam, claiming to be entitled thereto through his mother and grandmother, who was the daughter of the son of the great-grandson ...

who claimed through females, who were incapable ...

one-eighth share. On appeal by the defendant to

MAHOMEDAN LAW—ENDOWMENT
—continued.

the High Court,—*Held,* confirming the decision of the lower Appellate Court, that the plaintiff was entitled to share both in the offices of the durga and the endowment. The term "ahfad," being a term ...

...leum of the saint, and with that view to supply the means for the maintenance of the persons who should perform the offices, as well as for the ordinary expenses of keeping up the mausoleum. *A female* could not ... a strictly ... qualificatic ... from part ... not follow ... from the ... excluded. Had the intention of the gra... present case been to limit the class of descendants exclusively to persons claiming through males, the expression "aulad dar aulad" would have been used, instead of the general expression "aulad va ahfad." *Hussain Beebee v. Hussain Sherif, 4 Mad., 23,* and *Mujavar Ibrambibi v. Mujavar Hussain Sherif, I. L. R., 3 Mad., 95,* distinguished. KARIMODIN *v.* ALAM KHAN . . . I. L. R., 10 Bom., 119

13. ——————— *Wukf, Essentials of ...* ...le of the ...ification ...l of the ...and turah and ...madrassa, ...tenance al... ...gift com... ...ecessary to ...medan law.

Held also that, in the absence of any express direction as to what was to be done with any surplus profits of the dedicated property, the reasonable presumption is that the improved value of the dedicated property, or any excess of profit over and above the amount stated in the sanad, was intended by the ... the pro... ...assigned.

...lc., 533

14. ——————— *Wukf—Descent per stirpes—Grant in inam to grantee and children without restriction as to names—Direction to pray for perpetuity of Government.*—A sanad of the ... granted ... ...haro la... ...terms ...well as ...and con... ...of ...ion ...cof ...for

MAHOMEDAN LAW—ENDOWMENT —*continued*

their own maintenance, they may engage themselves in praying for the perpetuity of this ever-enduring Government." *Held* that this grant did not constitute wukf or a religious endowment, making the

for the perpetuity of the then existing Government meant no more than an inculcation of gratitude for the gift, and that neither neglect to fulfil the direction nor the downfall of the Government would work a forfeiture or avoidance of the grant. Although a wazifa grant may be a religious endowment, such is neither necessarily nor even generally its nature Hence the use of the term "mauzif" (*alias* "wazif" or "wazifa"), with regard to the grant of a village, does not stamp the grant as a wukf or religious endowment. MAHOMED ALI *v* GOBAR ALI

[I. L. R., 6 Bom., 88

15. ——— *Wukf—Power of revocation—Reservation of rents and profits to donor for life—Ultimate dedication of property to charity with intervening private interests—Rule*

tion to this rule. It is for the Courts to pronounce

MAHOMEDAN LAW—ENDOWMENT —*continued.*

to a perpetuity fails according to the principles of the English law. Where the proposed object of the endowment is one which is directly contrary to the public

appoint In default of appointment the trustees were to pay life-allowances to such descendants at their discretion. The rents and profits only were to be thus

to be expended on charitable purposes, such as expenses of poor pilgrims going to Mecca, building mosques, funeral and marriage expenses of poor people, sinking wells or tanks, or in such other manner as the trustees should think fit Shortly after the execution of the settlement, the trustees took possession of the property, and for fifteen years continued to pay the rents and profits to the settlor The settlor was married in 1876

Procedure Code (Act X of 1877) she stated a case for the opinion of the Court, contending that she could lawfully revoke the trusts declared by the said indenture, that if she could not revoke, then that the trust therein declared in favour of charity was void for

fourteen was not to be upheld without inquiry, yet the

reason contend that the dedication was invalid on account either of its ceremonial defects or of a want of an accompanying volition. FATMABIBI *v* ADVOCATE GENERAL OF BOMBAY . I. L. R., 6 Bom., 42

16. ——— *Wukfnama—Wukf—Perpetuity—Ultimate trust in favour of*

MAHOMEDAN LAW—ENDOWMENT —*continued.*

charity.—*M*, the father of the three defendants, executed an instrument purporting to be a wukfnama in favour of his heirs and descendants, generation after generation The office of mutwalli he reserved

the expenses of repairs and the taxes, etc., were to divide the balance into four equal shares, and to make

proceeded. "If any one from among my heirs and (? or) descendant after descendant should die, then the said mutwallis shall make his or her funeral outlays according to our custom and usage; and as to what may remain as a balance, they shall duly distribute and give the same to my heirs and descendants according to the book of God." Further as follows: "May God forbid it! If from among my heirs and

sold or mortgaged. On the 25th February 1883 the first two defendants mortgaged the properties comprised in the wukfnama to the plaintiff for R3,000. The

property comprised in it devolved upon his three sons as his heirs, and also that, assuming the wukfnama

17. ———— *Wukf—Settlement in favour of the settlor's family without any*

MAHOMEDAN LAW—ENDOWMENT —*continued.*

charitable or religious object A Mahomedan executed a deed, called a wukfnama, by which he settled his property in wukf on his two wives and daughters and their descendants in perpetuity For the manage-

[illegible] wife and her aulad, that on the failure of aulad and aflad of both wives, the next of kin of the settlor should receive the property; and he added that in [illegible] from genera- [illegible] e said two [illegible] es should [illegible] heir shares [illegible] f this property, consisting of two nafars, was set apart for such purposes as the building of his own tomb, the saying of prayers, the recitation of the Koran, etc; and he directed that in case the produce of the two nafars proved insufficient for these purposes, his wives and daughters and their descendants should contribute out of the property settled in wukf on them. *Held* that with the exception of the two nafars set

GULAM *v.* ABDUL GAFUR . I. L. R., 13 Bom.,

[illegible] Council, affirming the [illegible] ould neither be [illegible] as a settlement: [illegible] as a will, not having been validated by consent of heirs, as to two-thirds of the succession; and that, even if it could [illegible] the above provision [illegible] to be valid, [illegible] roperty to a [illegible] me or other [illegible] *Amarchand* [illegible] 7 *Calc.*, 498. [illegible] NIZA-MUDIN . . . I. L. R., 17 Bom., 1 [L. R., 19 I. A., 170

18. ———— *Appropriation* [illegible] *wukf—Property settled* [illegible] *ge upon* [illegible] *ffect of* [illegible] *substan-* [illegible] for the [illegible] religious [illegible] ith the [illegible] property being constituted wukf, [illegible] order to

MAHOMEDAN LAW—ENDOWMENT —*continued.*

render it wukf the property must have been substantially, and not merely colourably, dedicated to such purposes Although an instrument purporting to

13 W. R., 235, to the effect that the mere charge

dedication of the property to charitable or religious uses at some time or other, and the uses prescribed involving only an outlay suitable for such a family to make in charity, the gift was held not to be a substantial or *bonâ fide* dedication of the property

19. ———————— *Wukf, Constitution of—Dedication of property with temporary intermediate interests—Uncertain contingency—*

wukif's family. RASAMAYA DHUR CHOWDHURI v. ABUL FATA MAHOMED ISHAK

[I. L. R., 18 Calc., 399

20. ———————— *Wukf, Constitution of—Dedication to pious objects—Sajjadanashin—Mutwalli—Minor, Appointment of, as*

MAHOMEDAN LAW—ENDOWMENT —*continued.*

The respective duties of sajjadanashin and mutwalli discussed. The mode of appointment of sajjadanashin referred to *Semble*—A minor cannot be appointed the sajjadanashin of a durga or shrine PIRAN v. ABDOOL KARIM I. L. R., 19 Calc., 203

21. ———————— *Settlement in favour of the settlor's family with the reservation of a life-interest in part or the whole of the income for the settler—"Charitable"—"Religious"*—A wukf in favour of the settlor's children and kindred in perpetuity, with a reservation of a part or the whole of the income thereof in favour of the settlor for his own use during his lifetime, is valid. *Mahamed Ahsanulla Chowdhry v. Amarchand Kundu I. L. R., 17 Calc., 498: L. R., 17 I. A., 28*, referred to *Rasamaya Dhur Chowdhuri v. Abul Fata Mahomed Ishak, I. L. R., 18 Calc., 399*, dissented from. In the construction of a deed

[illegible] I. L. R., 19 Calc., 412

22. ———————— *Wukf—Conditional and revocable dedication—Conditions of a valid dedication*—A Mahomedan by an instrument

property to have Kathom recited in a mosque, give food to the mollahs who come there for reciting the same and get the moulu performed. The settlor reserved to herself and her representatives an option of dealing with the property as a special fund for the

recover her proportionate share of the property, notwithstanding the provisions of the above instrument. *Per* SHEPHARD, J.—There had been no complete dedication of the property, and except so far as regards the income required for the three specific objects named by the donor, her property was undisposed of. Conditions of a valid wukf considered. PATHUKUTTI v. AVATHALAKUTTI

[I. L. R., 13 Mad., 66

23. ———————— *Wukf—Construction of document.*—Where a Mahomedan of the Shia

MAHOMEDAN LAW—ENDOWMENT —*continued.*

duties,—*Held* that such a document could not be construed as creating a wukf. Though it was not impossible that a document creating a wukf might contain provision also for the family of the settlor, the dedication to charitable uses being postponed, yet here there was not even an ultimate dedication of property, with the intention apparently of preserving the estate in perpetuity intact under the headship of the property to charitable uses, but the object of the executant was evidently merely the maintenance of the family estates and of the dignity of the riasat. *Mahomed Ahsanulla Choudhry* v. *Amarchand Kundu, I L. R , 17 Calc., 498 L. R., 17 I. A , 28,* followed *Khajooroonissa* v. *Roushan Jehan, I. L. R., 2 Calc., 184 L. R., 3 I. A., 291,* and *Nizamuddin Gulam* v. *Abdul Gafur, I. L. R., 13 Bom , 264,* referred to. MURTAZAI BIBI v. JAMUNA BIBI . . . . I. L. R, 13 All., 261

24. ———— *Wukf- Wukfnama containing provision for descendants of the grantor*—The fact that the grantor of a wukf has in the deed constituting the same made some provision for the maintenance of his kindred and descendants will not render the wukf invalid *Mahomed Ahsanulla Chowdhry* v. *Amarchand Kandu, I. L R., 17 Calc., 498 L. R., 8 I. A , 28,* and *Muzhurool Huq* v. *Puhraj Ditarey Mohapattur, 13 W. R , 235,* referred to. DEOKI PRASAD v. INAIT-ULLAH . I. L. R., 14 All., 375

25. ———— *Wukf—Delivery of possession—Shia sect.*—According to the law applicable to the Shias sect of Mahomedans, a wukf-bil-wasiyat, or testamentary wukf, is not valid unless actual delivery of possession of the appropriated property is made by the wukif (or appropriator) himself to the mutwalli (or superintendent appointed by the wukif) According to the same law, the death of the wukif before actual delivery of possession of the appropriated property by him to the mutwalli or the beneficiaries of the trust renders the wukf null and void *ab initio* Consequently, where the wukif dies, as mentioned above, before actual delivery of possession of the appropriated property, the consent of his heirs to the testamentary wukf cannot validate such wukf. Distinction between wukf-bil-wasiyat and wasiyat-bil-wukf explained. AGHA ALI KHAN v. ALTAF HASAN KHAN . I. L. R., 14 All., 429

26. ———— *Wukf—Relinquishment of possession on the part of the wukif essential—Sunnis.*—According to the law of Sunni Mahomedans, it is essential to the validity of a wukf that the wukif should actually divest himself of possession of the wukf property.

perty subsequently passed to his two sons by inheritance,—*Held* that no valid wukf of the property mentioned in the said deed was constituted MUHAMMAD AZIZ-UD-DIN AHMAD KHAN v. LEGAL REMEMBRANCER, N.-W. P. AND OUDH [I. L. R , 15 All., 321

27. ———— *Wukf—Settlement in favour of the settlor's family with ultimate remainder to the poor—Dedication not substantially for religious and charitable ...*

in favour of the poor of Dacca. The lower Appellate Court held that the deed created a valid endowment to the extent of R75 per annum only, and that, subject to such charge, the properties were alienable. *Held* by the majority of the Full Bench (PETHERAM, C.J, TREVELYAN and GHOSE, JJ.; AMEER ALI, J., dissenting) upon the construction of the deed and upon the authority of *Mahomed Ahsanulla Chowdhry* v. *Amarchand Kundu, I. L. R , 17 Calc., 498, L. R., 17 I. A., 28,* that the instrument did not create a valid wukf, there being no substantial dedication to religious and charitable purposes. *Held* by the majority of the Full Bench (PRINSEP, GHOSE, and AMEER ALI, JJ.; PETHERAM, C.J., and TREVELYAN, J, dissenting) that the charge of R75 per annum should be allowed. *Held* by PRINSEP, TREVELYAN, and GHOSE, JJ, that the course of the decisions should not be disturbed by reference to texts which may favour the idea that a settlement on the settlor and his descendants in perpetuity is a pious Act. *Held* by PRINSEP and TREVELYAN, JJ., that upon the findings of the lower Courts no second appeal lay, and it was not therefore necessary to ...

lawyers of every school and sect ... in perpetuity are children, kindred, or neighbours in perpetuity are valid. To hold that a wukf, the benefaction of which is bestowed wholly or in part on the wukif's family and descendants, is invalid, would have the effect of abrogating an important branch of the Mahomedan law. A wukf is a permanent benefaction for ... The wukif may bestow ...

ing the family or descendants of the wukif ... the poor cipients of the charity so long as they exist, the poor are expressly or impliedly brought in to impart permanency to the endowment. The subsequent conduct

MAHOMEDAN LAW—ENDOWMENT —*continued.*

of the wukif cannot in any way affect the wukf BIKANI MIA v. SHUK LAL PODDAR

[I. L. R., 20 Calc., 116

28. ———— *Wukf—Deed invalid as a wukfnama—Attempted family settlement in perpetuity—Ultimate, but illusory, gift for charitable purposes.*—An instrument, nominally a wukfnama expressly purporting to make property

v. *Amarchand Kundu, I. L. R., 17 Calc., 498; L. R., 17 I. A. 28,* and *Abdul Gafur v. Nizamudin, I. L. R., 17 Bom., 1; L. R., 19 I. A., 170,* referred to and followed as the principle that the charitable purpose, in order to establish a wukf, must be substantial and not illusory. Provision for the dedicator's family, out of the appropriated property, may be consistent with the making a valid wukf, where the appropriation is substantially for a pious or charitable purpose. But, as family settlement in perpetuity is contrary to the Mahomedan law, and as successions of inalienable life-interests are forbidden, such dispositions cannot be rendered legal by the mere addition of the words that they are made as wukf, or for the benefit of the poor, where no substantial benefit is conferred on the latter. The decision of the Full Bench in *Bikani Mia v. Shuk Lall Poddar, I. L. R., 20 Calc., 116,* approved. ABUL FATA MAHOMED ISHAK v. RASAMAYA DHUR CHOWDHRI

[I. L. R., 22 Calc., 619
L. R., 22 I. A., 76

29. ———— *Wukf—Charitable and religious trusts—Perpetuities, Rule*

property as an appurtenance to the tomb, and that the performance of the ceremonies necessarily involved the distribution of charity, and that the lights at the tomb were of use to passers-by: *Held* on appeal, reversing the judgment of DAVIES, J., that the instrument was not a valid wukf, and was void as contravening the rule against perpetuities. KALEELOOLA SAHIB v. NUSEERUDEEN SAHIB

[I. L. R., 18 Mad., 201

30. ———— *Wukf—Illusory dedication—Fatcha ceremony—Custom as a guide to interpreting the intention of a wukif.*—In determining whether a disposition of property made by a Mahomedan is or is not a valid wukf, the intention of the wukif may be interpreted by reference to custom prevailing at the time the wukf was made, and if there is found to be a substantial dedication of the

31. ———— *Wukf—Illusory dedication—Settlement for benefit of descendants of the settlors.—Held* that a mere charge for some

Mad., 201, and *Mahomed Ahsanullah Chowdhry v. Amarchand Kundu, I. L. R., 17 Calc., 498,* referred to. MUHAMMAD MUNAWAR ALI v. RASULAN BIBI

[I. L. R., 21 All., 329

32. ———— Revocation of endowment —*Effect of revocation or improper conduct of trustees.*—A valid wukf cannot be affected by revocation or by the bad conduct of those responsible for the carrying out of the appropriator's behests, nor can it be alienated. DOYAL CHUND MULLICK v. KERAMUT ALI . . . . 16 W. R., 116

33. ———— *Removal for misconduct.*—According to Shia law, a man who devotes property to charitable or other uses and transfers the proprietary right therein to a trustee,

[2 N. W., 420

34. ———— *Grant reverting to donor on misconduct of mutwallis.* If mutwallis fail to act up to the directions of an endowment, the grant does not necessarily revert to the heirs of the grantee. REASUT ALI v. ABBOTT . 12 W. R., 132

35. ———— Management of endowment —*Position of manager—Limitation—Act XX of 1863.*—Since the passing of Act XX of 1863, a mutwalli, or manager of a Mahomedan endowment, cannot be considered to hold the position he was taken to have in the judgment of the Privy Council in *Jewun Doss Sahoo v. Shah Kubeeroodeen, 6 W. R.,*

MAHOMEDAN LAW—ENDOWMENT —*continued.*

36. ———————— *Land granted for purposes of—Right of succession to, and income of*—Land granted for the endowment of a khatibi, or other religious office, cannot be claimed by right of inheritance. Where such a grant has been made, the members of the grantee's family have no right

... Jaafar Mohiudin Sahib v. Aji Mohiudin Sahib 2 Mad., 19

37. ———————— *Suit against directors or mushavirs of a mosque—Board of directors not properly constituted under the rules of the mosque—Liability of directors for acts done by board not properly constituted—Appointment of officers—Management of property—Liability of provisional committee assuming authority to act—Trustees—Limitation Act (XV of 1877), art 120—Kazi—Act II of 1864 and Bombay Act IV of 1864—Nazir of mosque, Liability of—Parties.*—A certain Mahomedan mosque in Bombay, known as the Juma Masjid, was possessed of considerable property. The administration of the mosque and its property was carried on under rules which had been drawn up and approved in the year 1834 at a special general meeting of the jamat convened for the purpose in the course of a suit which had been filed in the Supreme Court against the then mushavirs of the mosque. That suit was referred to the master to make certain inquiries, and in his report these rules were set out in full. His report was confirmed by the Court. The rules provided that the mosque and its property should be managed by the kazi of Bombay and ten mushavirs, and that a nazir should be appointed by them and be subject to their control. The rules also prescribed the various duties of the kazi, mushavirs, and nazir, and declared that the power of filling up vacancies should be exercised by the kazi and mushavirs collectively or by the kazi and an absolute majority of the mushavirs. In 1834, and for many years subsequently, there was, as there had always been, a "Kazi of Bombay" appointed under a sanad from Government. He held the appointment for life, and the office was not hereditary. In 1866 the then kazi of Bombay died, but in consequence of the provisions of Act II of 1864 and Bombay Act IV of 1864 the Government made no new appointment, and the office lapsed. One *M*, however, assumed the office and was generally accepted by the community as kazi of Bombay. He died in 1878, and upon his death rival claimants sought the office of kazi of Bombay. The mushavirs were then advised that they could not select one of the rival kazis to fill the office of kazi of Bombay under the rules, and they therefore continued to manage the mosque without a kazi in violation of the rules of 1834 Two of the mushavirs (now relators) were of opinion that one of the rival applicants for the

virs. Subsequently in 1878 other vacancies occurred in the board. In 1888 the number of mushavirs was reduced to six, and two of them (the relators), as above stated, took no part in the administration, so that the management was left in the hands of the first four defendants. In 1891 four new mushavirs (defendants Nos. 6 to 9) were elected, and in that year the Advocate General at the relation of the two dissatisfied mushavirs filed this suit against the mushavirs. The former nazir of the musjid was also made a defendant (No. 5) He had held the office of nazir from 1879 to 1891, when he resigned. The plaint set forth the irregularities which had taken place in the management in 1878, and prayed for the removal of the defendants (other than defendant No. 5) from the position of directors or mushavirs, and for an account against all the defendants, and for a scheme, etc The following were the principal charges made against the defendants in the plaint

as they occurred or to carry on the government of the musjid Since that year the mushavirs were a provisional committee of management, kept up from time to time by co-optation, tacitly permitted by the jamat to manage the affairs of the musjid until the original constitution could be restored or legally changed, that original constitution being for the time in abeyance (2) The improper appointment in 1879 of one *C* (defendant No 5) as nazir. *Held* that the mushavirs incurred no liability and deserved no censure for so doing. (3) The neglect to call for an annual account of the income and expenditure of the mosque under rule 6. *Held* that this charge was not proved. (4) The neglect to purchase properties with the surplus income of the mosque as required by rule 4 Upon this point it was contended that the defendants should be charged with interest on the uninvested funds, so as to make up for the loss of rents which would have been recovered if properties had been purchased. In answer to this claim, it was argued (*a*) that, under the circumstances the mushavirs had no power to expend the funds of the mosque in purchasing property; and (*b*) that the claim was barred by limitation. *Held* that the claim fell within art. 120 of the schedule to the Limitation Act (XV of 1877), and was barred except as to six years prior to the filing of the suit, but even as to this period the Court refused to order accounts to be taken against the defendants. There had been no dishonesty or improper dealing with the funds of the mosque. The highest at which the case could be put was that there had been error of judgment. In this the community had acquiesced. Moreover, the position of the parties had changed. Some of the mushavirs were dead, others had resigned, and were not defendants to the suit, and it would be difficult to enforce contribution against them. The Court was further of opinion that, in any case, it was very doubtful whether a provisional committee like the mushavirs would have been justified in assuming the power of purchasing property. Had the property

MAHOMEDAN LAW—ENDOWMENT
—continued.

fallen in value, the purchase might perhaps have been repudiated. (5) Their neglect in not detecting sums appropriated by the bill-collectors of the mosque and getting in the same *Held* that, as a provisional committee who had assumed the management of the musjid, the defendants were bound to protect its interests Of the money which they actually received, or which was paid into their account, they were actual trustees but in addition to this they were officers of the musjid charged with the specific duty of superintending the nazir and his accounts, and if the musjid had suffered loss by their neglect of duty, they were answerable for it They neglected to examine the books a cursory audit of which would have detected the defalcations of the bill-collectors The Court therefore directed an account against them of the rents actually received, or which, but for their wilful default or neglect, they might have received from the bill-collectors (6) Their neglect in allowing *arrears of rent to accumulate and to be lost to the musjid* *Held* it was not the duty of the mushavirs to look into the account of each individual tenant Under the rules the nazir, and not the mushavirs, was entrusted with the collection of rents, and it was his duty to see that the rents were not allowed to fall unduly into arrear It was not shown that, except at an exceptional time when the nazir was ill, the rents were so much in arrear as to call for the active interference of the mushavirs, or that the musjid had suffered undue loss under this head The Court therefore refused relief on this charge (7) The non-payment into the bank of sums in the hands of [illegible]

[illegible] pleasure It was contended at the hearing that he was not a proper party to the suit, being merely the agent or servant of the directors, and not a trustee. *Held* that he was properly made a defendant. Both under Mahomedan law and under the rules the nazir was a public officer in charge of the mosque and as such liable to account to the community. ADVOCATE GENERAL OF BOMBAY *v* ABDUL KADAR JITAKER

[I. L. R., 18 Bom., 401

38. ———— Succession to management of endowment—*Succession to endowed property —Rules of founder—Usage—Primogeniture.*— Where property has been devoted exclusively to [illegible]

not be authorized to find in favour of any rule of succession by primogeniture solely from the circumstance that the persons appointed were usually

MAHOMEDAN LAW—ENDOWMENT
—continued.

the eldest sons GULAM RAHUMTULLA SAHIB *v*. MOHOMMED AKBAR SAHIB . . 8 Mad., 63

39. ———— *Wukf property— Founder's right to appoint manager—Right of executors to nominate manager—Akriba.*—Although, according to Mahomedan law, the founder of a wukf has a right to reserve the management of it to himself or to appoint some one else thereto, yet when he has specified the class from amongst which the manager is to be selected (*e g*, from amongst his relations), he cannot afterwards name a person as [illegible] After [illegible] inate a [illegible] s vakils [illegible] he time being The term "akriba" (relations), though more properly confined to relations by blood, will, when the context shows that it was intended to be used in a wider sense, be extended so as to include relations by affinity The wife or widow of the founder is not included amongst his "akriba." ADVOCATE GENERAL *v* FATIMA SULTANI BEGAM . . 9 Bom., 19

40. ———— *Misappropriation of funds, Effect of, on nature of trust— Construction of endowment or grant.*—Where the mutwalli of an endowment sought to recover his surburakari right in two villages, of which he had been dispossessed by a person who had obtained a decree against him personally and taken out execution against the endowment, and the said judgment-creditor contended,—first, that the proceeds of the endowment had been appropriated to other purposes than those specified in the firman creating it, second, [illegible]

grant was in the nature of a personal endowment: it was found that the nature of the firman removed all doubt of the wukf character of the endowment; [illegible]

question of the right of the plaintiff to succession could not, for the first time, be raised in this stage of the [illegible]

applied to personal grants and religious endowments. ASHEEROODDEEN *alias* KALLA MIAH *v*. DROBO MOYEE . . . . . . 25 W. R., 557

41. ———— *Alienation of endowed lands—Appointment of wife as mutwalli in husband's lifetime—Power to appoint mutwalli.* —Where a plaintiff sued to recover certain lands which had been appropriated to religious and charitable purposes by the father of her deceased husband, and urged that she had been ousted by defendant, who was the son of a half-brother of her husband; but the defendant contended that he had been put in

MAHOMEDAN LAW—ENDOWMENT —*continued.*

mutwallis and were the persons on whom, on the death of the existing mutwallis, the office of mutwalli would fall by descent, if indeed it had not already fallen upon them, as alleged in the plaint, by abandonment and resignation. Wukf property cannot be alienated, and any person interested in the endowment can sue to have alienations set aside and the property restored to the trust. *Per* RANADE, *J.* —As a suit for possession the suit was defective in form and could not be maintained. It was a suit for partition of a moiety of the lands, and the owner of the other moiety was not a party. The suit was, however, really a suit for a declaration that the lands were the main property of the mosque, and, as such, was not liable to alienation for the private debts of defendants Nos. 3, 4, and 5. The plaintiffs were entitled to sue for such a declaration, although they could not obtain actual possession. They were beneficiaries and had a right to sue under s. 42 of the Specific Relief Act (I of 1877). HASSAN *v.* SAGWA BABKRISHNA . . I. L. R., 24 Bom., 170

56. ——————— *Liability of wukf property in hands of widow to decree against husband.*—Where property is endowed (made wukf) by the proprietor, and as such devolves to his widow as trustee (mutwalli), it cannot be sold in satisfaction of a claim against him. FEGREDO *v.* MAHOMED MUDESSUR . . . . 15 W. R., 75

57. ——————— *Alienation by*

of trust property can be made by the trustee, the sanction of the kazi, in other words the Judge, is essential. Where the trustees of a certain mosque without obtaining the sanction of the Judge sold the lands in dispute which formed a part of the trust property to the plaintiffs in order to raise money to meet the expenses of litigation and the repair of the mosque,—*Held* that the sale was not merely voidable, but void. *Ismail Ariff* v. *Mahomed Ghouse I. L. R., 20 Calc., 834,* distinguished. *Rajesware Dasya* v. *Mahomed Abdullah, 7 Sel. Rep., 320,* and *Janun Doss Sahoo* v. *Kubeerooddeen, 2 Moore's I. A., 390,* followed. SHAMA CHURN ROY *v.* ABDUL KABEER . . . . 3 C. W. N., 158

58. ——————— *Mortgage.*—The

enforce the mortgage by sale of the land, and the endowment will be rendered void as against the purchaser under the mortgage, but not as against the heirs of the endower; as against the latter, the surplus sale-proceeds will be subject to the endowment. HAJRA BEGUM *v.* KHAJA HOSSEIN ALI KHAN [4 B. L. R., A. C., 86; 12 W. R., 498

Upholding on review, KHAJAH HOSSEIN ALI *v.* HAZARA BEGUM . . . 12 W. R., 344

59. ——————— *Waste committed*

Where a mut-

waste, the

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MED ALI KHAN

60. ——————— *Suit for assertion of khadimi rights—Sale of office to which*

W. R., 266; Kuppa Gurakal v. *Dorosami Gurakal, I. L. R., 6 Mad., 76; Mancharam* v. *Pranshankar, I. L. R., 6 Bom., 298;* and *Vurma Valia* v. *Ravi Vurma Kunhi Kutty, I. L. R., 1 Mad., 235; L. R., 4 I. A., 76,* referred to. SARKUM ABU TORAB ABDUL WAHEB *v.* RAHAMAN BUKSH [I. L. R., 24 Calc., 83

61. ——— Removal of manager—*Misconduct.*—If a superintendent of an endowment misconducts himself, the Mahomedan law admits of his removal, and this is sufficient to protect the objects for which the trust was created. HIDAIT-OON-NISSA *v.* AFZUL HOSSEIN . . . 2 N. W., 420

62. ——————— *Mismanagement —Power of donor.*—The rule of Mahomedan law that a mutwalli, or superintendent of an endowment, is removable for mismanagement, does not apply to the case of a trustee who has a hereditary proprietary right vested in him. It is essential for the exercise

time

ALI

SAIB

44

v. GULAM HUSSAIN SAIB

MAHOMEDAN LAW—ENDOWMENT —*continued.*

63. ——— *Misconduct.*—

heir or otherwise, to partake of the benefit of the endowment, he had no right to recover possession, and that the utmost he could ask for was to have the mutwalli who had misconducted himself removed, and a new mutwalli appointed, provided he showed circumstances which, according to law would justify the Court in selecting a mutwalli. BHUBRUCK CHUNDRA SAHOO *v.* GOLAM SHURRUF [10 W. R., 458

64. ——— *Removal of offi-*

ment in consequence of disobedience, the alleged cause of action being an order passed by the Civil

declared to have a right to the land as takhendar; and that the defendant's claiming to hold independently of the superintendent was an act of the gravest disobedience warranting the plaintiff's interference and the exercise of his authority. *Held* too that the suit was not barred by limitation, as the defendant held his office subject to the general control and authority of the superintendent, both parties executing the same trust. MEHER ALI *v.* GOLAM NUZUFF [11 W. R., 333

65. ——— *Rule that remu-*

properties, or are strangers to the endowment

MAHOMEDAN LAW—ENDOWMENT —*concluded.*

The sajjadanashin is not liable to income-tax in respect of such moneys as he draws from the khankah properties for the purpose of his own maintenance and that of his family. SECRETARY OF STATE FOR INDIA *v.* MOHIUDDIN AHMED [I. L. R., 27 Calc., 674

MAHOMEDAN LAW—GIFT.

See COMPROMISE — CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE. [6 Bom., A. C., 77

See DEED—CONSTRUCTION. [I. L. R., 13 All., 409

See LIMITATION ACT, 1877, ART. 91. [I. L. R., 11 All., 456

1. LAW APPLICABLE TO.

1. ——— Law of equity and good conscience—

2. ——— Questions as to gift arising in suits—*Bengal Civil Courts Act, VI of 1871, s. 24.*—Under s. 24 of Act VI of 1871, Mahomedan law is not strictly applicable to questions relating to gift arising in suits, but it is equitable as between Mahomedans to apply that law to such questions. SHUMSHOOLNISSA *v.* ZOHRA BEEBEE 6 N. W., 2 [Agra, F. B., Ed. 1874, 283

2. CONSTRUCTION.

4. ——— Gift for consideration—*Revocable grant—Construction of instrument of gift.* — One of two brothers, co-sharers in ancestral lands died leaving a widow, who thereupon became entitled to one-fourth of her husband's share of the family inheritance. Without relinquishing her right to claim her share, in lieu thereof she received an allowance of cash and grain. The surviving brother made an arrangement with her, which was carried into effect by documents. By one instrument he granted two villages to her. By another she accepted the gift, giving up her claim to

MAHOMEDAN LAW—GIFT—*continued.*

2. CONSTRUCTION—*continued.*

any part of the ancestral estate of her husband. The first instrument, *inter alia*, stated as follows: "I declare and record that the aforesaid sister-in-law may manage the said villages for herself and apply their income to meet her necessary expenses and to pay the Government revenue" *Held* that these words did not cut down previous words of gift to what in the Mahomedan law is called an arriat, and that the transaction was neither a mere grant of a license to the widow to take the profits of the land revocable by the donor nor a grant of an estate only for the life of the widow. It was a hibbah-bil-iwaz, or gift for consideration, granting the villages absolutely MAHOMED FAIZ AHMED KHAN *v* GHULAM AHMED KHAN . . I. L. R., 3 All., 490 [L. R., 8 I. A., 25

5. ——— Transfer of absolute estate—*Condition—Sunni law—Shiah law.*—The owner of [illegible]

[illegible]

6. ——— Deed of gift—*Will—Validity of declaration of title.*—*Held* that a document to the following effect was a deed of gift and not a will "I have no children. Therefore my own brother, [illegible]

[illegible]

possession of the said Mir Saheb. . . I have a share in the goods and property of my husband, Mir Afzaloodin Khan Saheb, the Nawab of Surat. The owner thereof also is the same Mir Saheb. Therefore in my lifetime should this property come into my hands, I will also deliver the same into the possession of the said Mir Saheb. Because the said Mir Saheb being the heir of all my goods and pro- [illegible]

[illegible]

husband's property be regarded as a declaration of title, such declaration had, according to Mahomedan law, no validity to create a proprietary right in the said share after the grantor's death. KAVARBAI *v* ALAM KHAN . . I. L. R., 7 Bom., 170

MAHOMEDAN LAW—GIFT—*continued.*

2. CONSTRUCTION—*concluded.*

3. VALIDITY.

[illegible]

the donor. Where therefore it was found that a [illegible]

[illegible]

necessary to find the further fact, whether the deed was delivered by the donor before her death and whether such delivery was in contemplation of death, and with the intention that it should become effectual on the death of the donor. NUSSEBUN BIBEE *v.* ASHRUFF ALLY . . Marsh., 315: 2 Hay, 163

8. ——— *Legacy* —According to Mahomedan law, a gift on a death-bed is viewed in the light of a legacy. ASHADOOLLAH *v* SHAEBA JHASORE . . . . 2 Hay, 345

9. ——— Gift in contemplation of death—*Will.*—According to the Mahomedan law, [illegible] though not [illegible] one-[illegible] two thirds going to the heirs. In the absence of heirs, a will carries the whole property. EKIN BEBEE *v.* ASHRUF ALI . . . 1 W. R., 152

10. ——— *Will—Person labouring under sickness of which he dies.*—According to Mahomedan law, if a person executes a gift while labouring under a sickness from which he never recovers, and which ultimately proves fatal to him, effect can be given to the instrument only to the extent of one-third KUREEMUN *v.* MULLICK ENAYT HOSSEIN . . . . W. R., 1864, 221

11. ——— *Will—Consent of* [illegible]

[illegible] gift or will is made in favour of one [illegible] the will or gift, so far as it relates to that heir, will be inoperative without the consent of the other heirs. ASHRUFFUNNISSA *v.* AZEEMUN. BARODA KOOERY *v.* ASHRUFFUNNISSA . . . 1 W. R., 17

12. ——— *Lease granted during illness*—A mokurari lease, extended where the grantor was dangerously ill and in contemplation of death, was held to be a death-bed gift, and his natural heirs declared incapable of taking anything under it except their shares of the defendant's property according to Mahomedan law. ENAYET HOSSEIN *v.* KUREEMOONISSA . . . 3 W. R., 40

MAHOMEDAN LAW—GIFT—*continued.*

3 VALIDITY—*continued.*

13. —— *Gift by person labouring under disease*—Under the Mahomedan

person labouring under such a disease cannot make a valid gift of the whole of his property until a year has elapsed from the time he was first attacked by it. When a gift is made by a person labouring under such a disease, it is good to the extent of one-third of the subject of the gift, if the donee has been put into possession by the donor. LABBI BEEBEE *v.* BIBBUN BEEBEE . . . . 6 N. W., 159

14. —— *Gift during mortal illness—Donatio mortis causâ—Marz-ul-*

applicable to marz-ul-maut gifts, several questions

induce the donor to believe that death would be caused thereby or to engender in him the apprehension of death? (3) Was the illness such as to incapacitate him from the pursuit of his ordinary avocations or standing up for prayers, a circumstance which might create in the mind of the sufferer an apprehension of death? (4) Had the illness continued for such a length of time as to remove or lessen the apprehension of immediate fatality or to accustom the sufferer to the malady? The limit of one year, mentioned in the law books, does not lay

15. —— *Absence of im-*

MAHOMEDAN LAW—GIFT—*continued.*

3 VALIDITY—*continued*

16. —— *Absence of immediate apprehension of death*—*Semble*—A gift by a sick person is not invalid if at the time he made it he was in full possession of his senses and there was no immediate apprehension of death. IBRAHAM *v.* SULEMAN . I. L. R., 9 Bom., 146

17. —— *Gift in lieu of debt for dower—Sale—Dower*—*Held* that the provisions of the Mahomedan law applicable to gifts

18. —— *Will—Disposition in favour of heir—Consent of other heirs.*—A

invalid. *Held* that the instrument, though pur-

document had never existed at all. WAZIR JAN *v.* ALTAF ALI . I. L. R., 9 All., 357

19. —— *Death-bed gifts—Consent of heirs—Musha—Delivery of possession*

the above dispositions of his property were death-bed gifts. It appeared that the donor had separate possession of the land disposed of by him, though part of it was held under joint pottahs, in which others were interested; and also that on the date of the gift the transfer of ownership of the mitta property was proclaimed by beat of tom-tom, and that the tenants were called upon to attorn to the donees, who subsequently collected rent. The widow took no exception to the gifts, but after two years one of

they were made, (2) that this consent not having been revoked on the donor's death, and there having been sufficient delivery of possession, the gifts were

MAHOMEDAN LAW—GIFT—*continued.*

3. VALIDITY—*continued.*

complete, (3) that the gifts were not impeachable on the ground of musha. Evidence of undue influence considered. SHARIFA BIBI *v.* GULAM MAHOMED DASTAGIR KHAN . . I. L. R., 16 Mad., 43

20. ——— Deed of sale—*Joint gift—Without discrimination of shares*—Where a conveyance between Mahomedans, though in form a

tion of the parties, rather than the form of the instrument used, should be considered. A deed of gift, in English form, of a house to three persons as joint tenants (without discrimination of shares) is good according to Mahomedan law, as it shows an intention on the part of the donor to give the property in the whole house to each of the donees. A gift by a Mahomedan in Bombay which contravenes the principles of English Courts of equity with regard to gifts to persons standing in a fiduciary relation to the donors will not be upheld. RAJABAI *v.* ISMAIL AHMED . . . 7 Bom., O. C., 27

21 ——— Deed of gift altering succession of property by law *Intention of parties*

perty than would come to him by succession *ab intestato*, *Held* that the transaction could not be impeached on moral grounds, as a design to alter the disposition of property so as to defeat a succession by an alienation, which the law allows, is simply a design to conform to the law while working out an unforbidden object *Held* also that the intention of the parties did not violate any provision of the Hedaya, and the transfer was complete and the gift valid UMJAD ALLY KHAN *v.* MOHUMDEE BEGUM

[10 W. R., P. C, 25: 11 Moore's I. A., 517

22. ——— Hiba-bil-iwaz—*Effect of, upon heirs*—A hiba-bil-iwaz differs from an out-and-out sale as well as from a gift while it partakes of the character of both and, if supported by sufficient consideration is binding under the Mahomedan law upon the heirs of the party executing such deed. SOLAH BIBEE *v.* KEERUN BIBEE . 16 W. R., 175

23 ——— *Condition of good behaviour.*—A gift is not necessarily hiba-bil-iwaz

[3 Agra, 237

24. ——— Alienation by Mahomedan lady *Consent of children*—A Mahomedan lady can sell or give away her property as she pleases When a mother makes a gift to her children, and one of them seeks to set it aside as fraudulent so far as it affects the plaintiff's right of inheritance, so long as the mother is alive and admits the execution of the deed of gift, the plaintiff is not in a position to disturb it; and it is quite immaterial in such a case whether the plaintiff's consent was or was not given. MAHOMED ZUHEERUL HUQ *v.* BUTOOLUN

[I W. R., 79

25. ——— Gift on death-bed—*Will.*—A Mahomedan widow, or any other woman, holding property in her own right, may give it away to whomsoever she pleases, unless she delays the gift till upon her death-bed, when such a gift would be looked upon as a will, and be inoperative beyond a certain limit. LUTEEFOONISSA BIBEE *v.* RAJAOOR RUHMAN . . . 8 W. R., 84

26. ——— Gift to take effect at an indefinite future time—*Mapillas.*—Gifts to take effect at an indefinite future time are void under Mahomedan law. CHEKKONEKUTTI *v.* AHMED

[I. L. R., 10 Mad., 196

27. ——— Delivery of possession—*Possession with mortgagee—Sale—Minors*—A

pute) of which she professed to have obtained possession under a decree against her co-parceners The plaintiff, on the strength of the deed of gift, sued for a declaration of his right to the land, alleging that the donor had actually recovered possession in execution of her decree. The Original and Appellate Courts found that the defendant was, at the date ... order a mort- ... and that ... eject the ... ate) that ... imply the ... a mort- ... make a ... ne. See ... 645.

When the donee is a minor, possession may be had by a trustee on his behalf MOHINUDIN *v.* MANCHERSHAH . . I. L. R., 6 Bom., 650

28. ——— Gift of share before partition—*Co-sharers.* According to the Mahomedan law, one of two sharers can give over his share to the other even before partition. AMEENA BIBEE *v.* ZEIFA BIBEE . . . . . 3 W. R., 37

29. ——— Gift without delivery of possession—*Hiba-bil-iwaz, or gift on stipulation—Possession necessary for such a gift—Registration not equivalent to delivery of possession so as to validate gift.*—By a deed of gift duly executed and registered a Mahomedan woman gave certain property to the plaintiff's father. The deed stated that the plaintiff's father had always protected the donor, and that she gave him the property in full confidence that he would continue to do so. *Held* that the gift, if not a simple gift, was at any rate a "gift on stipulation, and that such a gift, in order to be valid, required that seisin should be given to the donee. The registration of a deed of gift between

MAHOMEDAN LAW—GIFT—*continued.*

3. VALIDITY—*continued.*

Mahomedans does not cure the want of delivery by the donor. MOGULSHA *v.* MAHAMAD SAHEB
[I. L. R., 11 Bom., 517

30. ——— Gift of undivided property —*Musha, or confusion—Change of possession.*— Where there is on the part of a father or other guar-

Where the subjects of a gift are definite shares in certain zamindaris, the nature of the right in which is defined and regulated by the public Acts of the British Government, so that they form for revenue purposes district estates, each having a separate number in the Collector's books, and each liable to the Government only for its own assessed revenue, the

AMEEROONISSA KHATOON *v.* ABADOONISSA KHATOON
[15 B. L. R., 67: 23 W. R., 208
L. R., 2 I. A., 87

31. ——— Gift of property not in possession—*Gift of zamindaris let out on lease, and*

time when the gift is made, his relation, so far as it

the whole of which is let out on lease to tenants, invalid. Nor is there any principle by which to

32. ——— *Hiba, or deed of gift—Gift by husband to wife—Possession—Continued receipt of rents by husband—Husband, Manager for wife—Gift of "musha" or undivided part—Subsequent partition.*—In 1871 *H G*, a Mahomedan, executed a formal hiba or deed of gift, to his wife, the defendant, of a house belonging to himself, but let out to tenants, and duly registered the deed. In 876-77 he caused the house to be trans-

entered in his books and drawn upon for family purposes in the same manner as they had always been. In 1881-82 *H G* had an account of the rents of the house prepared in his wife's name from 871-72 up to date. *Held* that the above circumstances afforded sufficient evidence of possession having been given to the defendant, either in 1871 or 1876, to satisfy the requirements of Mahomedan law. *H G,*

circumstances sufficiently showed that he did. In 1883 *H G* executed a second hiba, duly registered, to the defendant, of an undivided moiety of the house in which he and the defendant resided, and to which *H G* and his brother were entitled in equal shares. No partition had been made between *H G* and his brother when *H G* died. *Held* that the gift was invalid, as being a gift of a "musha," or undivided part, in a thing susceptible of partition. *Quære*—Whether, if there had been partition subsequently to the deed, that would or would not have operated to validate the gift. EMNABAI *v.* HAJIRABAI
[I. L. R., 13 Bom., 352

33. ——— *Pension—Gift of musha—Undivided part—Ascertained share—Transfer of possession—Mutation of names—Delivery of title-deeds—Bengal Civil Courts Act (VI of 1871), s. 21—Pension Act (XXIII of*

whole pension. No mutation of names was effected in the Government registers, but the deed of gift and the sanads, in respect of which the pension had

delivery or transfer of possession was, under the same

MAHOMEDAN LAW—GIFT—*continued.*

3. VALIDITY—*continued.*

law, essential to the completion of the gift, but no such delivery or transfer had been effected. *Held* that the deed of gift was not a good assignment in law of the interest of the plaintiff, who was not a party thereto, and the defendant could take nothing more than the donor's own interest *Held* that whatever might be the Mahomedan law apart from the Pensions Act, under s 7 of the Act, the pension or any interest in it was capable of being alienated by way of gift, the subject of the gift being not the cash, but the right to have the pension paid *Held*

ascertained and required no further separation than was already effected upon the sole owner's death. *Held* that the rule of the Mahomedan law as to the invalidity of gifts purporting to pass more than the

that where a man having a definite ascertained interest in a pension, and intending at any rate to pass his

possession was possible, possession of a right to receive pension could only be given by handing over the documents of the title connected with the pension or assigning the right to receive the pension; that the gift in this case was perfect as soon as the deed was executed and handed over with the other papers to

[I. L. R., 9 All. 13

34. ——————— *Mahomedan law of gift—Possession not delivered at the time, but afterwards obtained—Musha, mixed, or common property, with shares undistinguished.*—A hibanama gave an undivided share in mokurari and zamindari holdings, besides other property not reduced into possession, the whole of which had, as a matter of

undivided share in property capable of division; it having been settled that one of two sharers may give his share to the other before division, whence it followed that one of three sharers might give his share to the other two. *Ameena Bibi v. Zeifa Bibi*, 3

MAHOMEDAN LAW—GIFT—*continued.*

3. VALIDITY—*continued.*

W. R. 37 referred to and approved. *Held* also that

been out of possession, and therefore not having

intended gift, he cannot be compelled to do more), the Hindu case of *Kali Das Mullick v. Kanhaya Lal Pundit L. R., 11 I. A., 218 : I. L. R., 11 Calc., 121*, was referred to. MAHOMED BUKSH KHAN v. HOSSEINI BIBI . . . I. L. R., 15 Calc., 684
[L. R., 15 I. A., 81

35. ——————— *Claim to possession of property under deed of sale—Consideration—"Musha"—Effect of possession following upon gift to render it valid.*—The law relating to the

show that possession taken under a gift, even although that gift might with reference to "musha" be

daughter before them. *Held*, in a suit for the possession of the property, on a sale by the heir of the donor, brought by the vendees against him, and

. 460
L. R., 16 I. A., 205

36. ——————— *Musha—Gift of an undivided share—Gift of future revenues of*

A Mahomedan executed a deed of gift in favour of

MAHOMEDAN LAW—GIFT—*continued.*

3. VALIDITY—*continued.*

37. ——— Interest of donees unde-

[illegible]

38. ——— Gift in lieu of dower—*In-*

[illegible]

AMMA . . . . . . 4 Mad., 115

39. ——— Gift without defining respective shares of donees—*Act VI of 1871,*

[illegible]

competent to manage land paying revenue. *Z* exe-

MAHOMEDAN LAW—GIFT—*continued.*

3. VALIDITY—*continued.*

[illegible]

40. ——— Undefined gift—*Gift by father to minor son*—The rule that an undefined

[illegible]

41. ——— Gift of defined share in land—*Separate property.*—A defined share in a landed estate is a separate property, to the gift of which the objection which attaches under Mahomedan law to the gift of joint and undivided property is inapplicable. JIWAN BAKHSH *v.* IMTIAZ BEGAM . . . . I. L. R., 2 All., 93

42. ——— Gift of defined share of property—*Possession—Hanifia Code—Imamia Code.*—A Mahomedan bequeathed his property to his two nephews, Gulam Rasul and Gulam Ali, as joint tenants Gulam Ali died, leaving a widow and a daughter, who continued to be joint tenants with

[illegible]

43. ——— *Reservation of income—Condition against alienation—Undivided property—Indivisible property.*—*B* owned a one-

[illegible]

MAHOMEDAN LAW—GIFT—*continued.*

3. VALIDITY—*continued.*

indivisible thing was valid under that law. KASIM HUSSEIN *v.* SHARIF-UN-NISSA

[I. L. R., 5 All., 285

44 [illegible] as to alien [illegible] ing his son's [illegible] and on the d[illegible] ocument stipulating (1) that he would not alienate; (2) that at his death the property should return to the father. This document was deposited with the father, and not heard of until the property was taken in execution for the son's debts, many years after the gift *Held* that by Mahomedan law, as well as by the general principles of law, such a restriction on alienation, especially after the gift had become complete long before, is absolutely invalid. AMIRUDDAULA MUHAMAD KAKYA HUSSAIN KHAN *v.* NATERI SRINIVASA CHARLU. JAGHIRDAR OF VIRUTHALABATHI *v.* NATERI SRINIVASA CHARLU . . 6 Mad., 356

45 ———— Gift coupled with condition *Absolute gift.*—A testatrix was entitled to Government notes under a gift coupled with the condition that she was to receive only the interest during her life, and that after her death the notes were to be held in trust for all her heirs *Quære*—Whether, under the Mahomedan law, the gift made to the testatrix was not a gift to her absolutely, the condition being void. SULEMAN KADR *v.* DORAB ALI KHAN . . . . I. L. R., 8 Calc., 1

[L. R., 8 I. A., 117

46. ———— Possession, Necessity of—*Donor out of possession.*—To make a deed of gift valid under the provisions of the Mahomedan law, seisin is necessary; if the donor is not in possession at the time, the gift is void. ABEDOONISSA KHATOON *v.* AMEEROONISSA KHATOON . . 9 W. R., 257

47. ———— *Possession given and accepted.*—Under the law of the Sherra, gifts are not valid until possession is given by the donor and taken by the donee. OBEDUR REZA *v.* MAHOMED MUNEER . . . . . 16 W. R., 88

48. ———— *Hibba.*—Possession is under the Mahomedan law absolutely necessary to establish the validity of a hibba. SHAHJAN BIBEE *v.* SHIB CHUNDER SHAHA . . 22 W. R., 314

49 ———— *Contingent or postponed gift—Possession not immediate.*—Under the Mahomedan law, a gift cannot depend upon a contingency or be postponed, but possession must be immediate. ROSHUN JAHAN *v.* ENAET HOSSEIN

[5 W. R., 4

50 ———— *Donor remaining in possession.*—According to Mahomedan law, a gift is invalid when the donor is to remain in possession during his lifetime. ZOHOOROODEEN SIRDAR *v.* BAHAROOLLAH SIRCAR . . W. R., 1864, 185

51. ———— *Donor remaining in possession—Deed of gift—Consideration.*—The policy of the Mahomedan law is to prevent a testator interfering by will with the course of the devolution of property according to law among his heirs. But a holder of property may defeat the policy of the law by giving in his lifetime the whole, or any part, of his property to one of his heirs, provided he complies with certain forms. This may be done by a deed of gift without consideration, or by deed of gift for considera[illegible] deed of gift without consider[illegible] delivery of [illegible] delivery. In the case of a gift for consideration, delivery of possession is not necessary for its validity, and no question arises as to the adequacy of the consideration; but there must be an actual payment of the consideration by the donee, and a *bonâ fide* intention on the part of the donor to divest himself *in præsenti* of the property, and to confer it on the donee. It is incumbent on those who set up transactions of this nature to show very clearly that the forms of the Mahomedan law, whereby its policy is defeated, have been strictly complied with. KHAJOOROONISSA *v.* ROUSHAN JEHAN

[I. L. R., 2 Calc., 184: 26 W. R., 36
L. R., 3 I. A., 912

affirming the decision of the High Court in ROSHUN JAHAN *v.* ENAET HOSSEIN . 5 W. R., 4

52. ———— *Gift in futuro.*—Under the Mahomedan law, a gift is not valid unless it is accompanied by possession, nor can it be made to take effect at any future definite period. A document containing the words, "I have executed an ikrar to this effect, that, so long as I live, I shall enjoy and possess the properties, and that I shall not sell [illegible] after my death, you will [illegible] ke [illegible] ift [illegible] der Mahomedan law. YUSUF ALI *v.* COLLECTOR OF TIPPERAH . . . I. L. R., 9 Calc., 138

53. ———— *Delivery—Donee in physical possession prior to gift—Formal delivery, entry, or departure—Manifest intention of donor to transfer.*—For the purposes of completing a gift of immoveable property by delivery and possession, no formal entry or actual physical departure is necessary; it is sufficient if the donor and donee are present on the premises, and an intention on the part of the donor to transfer has been unequivocally manifested. IBHRAM *v.* SULEMAN

[I. L. R., 9 Bom., 146

54. ———— *Gift made on death-bed—Delivery of possession.*—Where property, the subject-matter of a gift made by a Mahomedan during his death illness (marz ul maut), was in the hand of the donee as manager or agent of the donor, it was held that the possession of the donee as such manager or agent was not such possession as [illegible] of the gift [illegible] or formal [illegible] erty. Va[illegible] L. R., 91

MAHOMEDAN LAW—GIFT—*continued.*

3. VALIDITY—*continued.*

55. ———————— *Change of possession—Consideration.*—On an issue whether an oral gift of an estate consisting of certain talukhs

NISSA BIBI *v.* HUSAINI BIBI [I. L. R., 3 All., 266

56. ———————— *Seisin—Sur-*

should credit the produce of two shares on account

BEGUM

3 Moore's I. A., 245

58. ———————— *"Tamlik," or*

—"Tamlik" or assignment

cutant's property, and provided that the executant should during her life enjoy the income from the property; that at her death *S* should have the pro-

MAHOMEDAN LAW—GIFT—*continued.*

3. VALIDITY—*continued.*

following: "But *S*, or her transferee, shall get possession of the said share only after my death. On my death *S* and her heirs shall become the owners of *this share*" *The deed could only have validity as a* will; as a deed of gift, it was wholly invalid. KASUM *v.* SHAISTA BIBI . 7 N. W., 313

59. ———————— *Seisin and acceptance of possession—Residence and receipt of rent by donor.*—A Mahomedan husband executed a "hibba," or deed of gift, without consideration, in

wife till his death, and received the rents of other parts of the property comprised in the hibba. The continued occupation or residence and receipt of rents were in such circumstances to be referred to the character which the donor bears of husband, and to the rights and duties connected with that character. AMINA BIBI *v.* KHATIJA BIBI . 1 Bom., 157

60. ———————— *Gift by husband to wife—Delivery of possession—Gift, Validity of, as against creditor, or subsequent bonâ fide purchasers.*—The plaintiff, the nika wife of the late Nawab of the Carnatic, sued for a declaration of her absolute title to certain premises (Nos 1, 2, 4, and

was so found) as to 2, 5, and 6, that he had never

MAHOMEDAN LAW—GIFT—*continued.*

3. VALIDITY—*continued.*

indivisible thing was valid under that law. KASIM HUSSEIN *v.* SHARIF-UN-NISSA

[I. L. R., 5 All., 285

44 ———— Gift with restriction as to alienation—*Absolute gift.*—Plaintiff, during his

not heard of until the property was taken in execution for the son's debts, many years after the gift *Held* that by Mahomedan law, as well as by the general principles of law, such a restriction on alienation, especially after the gift had become complete long before, is absolutely invalid. AMIRUDDAULA MUHAMAD KAKYA HUSSAIN KHAN *v.* NATERI SRINIVASA CHARLU. JAGHIRDAR OF VIRUTHALABATHI *v.* NATERI SRINIVASA CHARLU . . 6 Mad., 356

45. ———— Gift coupled with condition *Absolute gift.*—A testatrix was entitled to Government notes under a gift coupled with the condition that she was to receive only the interest during her life, and that after her death the notes were to be held in trust for all her heirs *Quære*—Whether, under the Mahomedan law, the gift made to the testatrix was not a gift to her absolutely, the condition being void SULEMAN KADR *v.* DORAB ALI KHAN . . . I. L. R., 8 Calc., 1

[L. R., 8 I. A., 117

46. ———— Possession, Necessity of—*Donor out of possession.*—To make a deed of gift valid under the provisions of the Mahomedan law, seisin is necessary, if the donor is not in possession at the time, the gift is void. ABEDOONISSA KHATOON *v.* AMEEROONISSA KHATOON . . 9 W. R., 257

47 [illegible]

MUNEER . . . . [illegible]

48 ———— *Hibba.*—Possession is under the Mahomedan law absolutely necessary to establish the validity of a hibba. SHAHJAN BIBEE *v.* SHIB CHUNDER SHAHA . . 22 W. R., 314

49 ———— *Contingent or postponed gift—Possession not immediate.*—Under the Mahomedan law, a gift cannot depend upon a contingency or be postponed, but possession must be immediate. ROSHUN JAHAN *v.* ENAET HOSSEIN

[5 W. R., 4

50. ———— *Donor remaining* [illegible]

51. ———— *Donor remaining in possession—Deed of gift—Consideration.*—The policy of the Mahomedan law is to prevent a testator

MAHOMEDAN LAW—GIFT—*continued.*

3. VALIDITY—*continued.*

[illegible]

for consideration A conveyance by deed of gift without consideration is invalid, unless accompanied by delivery of the thing given, so far as it admits of delivery. In the case of a gift for consideration, the delivery of possession is not necessary for its validity, and no question arises as to the adequacy of the consideration; but there must be an actual payment of the consideration by the donee, and a *bonâ fide* intention on the part of the donor to divest himself *in præsenti* of the property, and to confer it on the donee. It is incumbent on those who set up transactions of this nature to show very clearly that the forms of the Mahomedan law, whereby its policy is defeated, have been strictly complied with. KHAJOOROONISSA *v.* ROUSHAN JEHAN

[I. L. R., 2 Calc., 184: 23 W. R., 36

L. R., 3 I. A., 912

affirming the decision of the High Court in ROSHUN JAHAN *v.* ENAET HOSSEIN . 5 W. R., 4

52. ———— *Gift in futuro*—Under the Mahomedan law, a gift is not valid unless [illegible] nor can it be made to [illegible] document [illegible]

TIPPERAH . . . I. L. R., [illegible] Calc., 138

53. ———— *Delivery—Donee in physical possession prior to gift—Formal delivery, entry, or departure—Manifest intention of donor to transfer.*—For the purposes of completing a gift of immoveable property by delivery and [illegible] entry or actual physical departure [illegible] donor and donee [illegible] intention on the [illegible] unequivocally [illegible]

[illegible] Bom., 146

54. ———— *Gift made on death-bed—Delivery of possession.*—Where property, the subject-matter of a gift made by a Mahomedan during his death illness (marz ul maut), was in the hand of the donee as manager or agent of the donor, it was held that the possession of the donee as such manager or agent was not such possession as would render it necessary to the validity of the gift that there should have been an actual or formal delivery to him of possession of the property. VALAYET HOSSEIN *v.* MANIRAN . 5 C. L. R., 91

MAHOMEDAN LAW—GIFT—*continued.*

3. VALIDITY—*continued.*

55. ——— *Change of possession—Consideration* —On an issue whether an oral gift of an estate consisting of certain talukhs

56. ——— *Seisin—Surrender and delivery to donee.*—The plaintiff's deceased sister in her lifetime was the owner of three and a half undivided shares in a village, which she mortgaged in 1816, upon the terms that the mortgagee should be put into possession, and that he should credit the produce of two shares on account

Begum

57. ——— *Absence of relin-*

3 Moore's I. A., 245

58. ——— *"Tamlik," or*

following "But S, or her transferee, shall get

59. ——— *Seisin and acceptance of possession—Residence and receipt of rent by donor* —A Mahomedan husband executed a "hibba," or deed of gift, without consideration, in

60. ——— *Gift by husband to wife—Delivery of possession—Gift, Validity of, as against creditor, or subsequent bonâ fide purchasers*—The plaintiff, the nika wife of the late Nawab of the Carnatic, sued for a declaration of

was so found) as to 2, 5, and 6, that he had never

MAHOMEDAN LAW—GIFT—*continued.*

3. VALIDITY—*continued.*

of the donor, and also (as the donor and donee were both Mahomedans) against subsequent purchasers for valuable consideration from the donor, but that defendant had never had possession of the title-deeds of Nos. 2, 5, and 6, so that the suit could not be maintained as regards them. Under Mahomedan law, "in the instance of a wife who may give a house to her husband, the gift will be good, although she *continue to occupy it along with her husband and keep* all her property therein, because the wife and her property are both in the legal possession of the husband So also it has been held by some that if a father transfer his house to his minor son, himself continuing to occupy it and to keep his property therein, the gift is valid, on the principle that the father in retaining possession is acting as agent for his son, according to which doctrine his possession is equivalent to that of his son." Reason requires that the same principle should be applied to the case of a gift by husband to wife. The wife may, according to Mahomedan law, hold property independent of her

the continuance of the relation of husband and wife AZIMUNNISSA BEGUM v. DALE . 6 Mad., 455

61. ———— *Gift by father to infant child.—Held* that it is not necessary by the Mahomedan law that possession should follow to complete a gift by a father to his infant child. GYASOODDEEN HYDER v. FATIMA BEGUM . 1 Agra, 238

62. ———— *Gift by father to minor son.*—According to Mahomedan law, no formal delivery and seisin are necessary to the validity of a gift of property by a father to a minor son. Where a son has divested himself in favour of his father of all interest in property which had been given to him by his parents, before any legal effect can be given to such a transfer, the clearest proof is necessary of good faith and joint dealing between the parties, and also that the father's influence was not unduly *exercised for his own advantage.* WAJEED ALI v. ABDOOL ALI . W. R., 1864, 127

63. ———— *Absence of change of possession—Gift by father to son.*—Gift by father to son held not valid as being followed by no real change in the nature of the enjoyment of the property, and merely nominal. MUNNOO BIBEE v. JEHANDAR KHAN . 1 Agra, 350

64. ———— *Gift by a father—Gift of undivided share—Delivery of possession.*—A Mahomedan made a gift in writing to his daughter on her marriage of an undivided moiety of his share in certain buildings, which were the property of the donor's wife. On the death of the donee, her husband married her sister, and the donor thereupon similarly made a gift to her of the remaining undivided moiety. The donees were minors at the dates of their respective gifts. The husband now sued to recover the share of his first wife, of which delivery had not been made *Held* that the gift was no

MAHOMEDAN LAW—GIFT—*continued*

3. VALIDITY—*continued.*

invalid, either for indefiniteness or for want of delivery of possession. HUSSAIN v. MIRA [I. L. R., 13 Mad., 46

65. ———— *Ground for cancellation of deed of gift—Want of delivery of possession to donee.—Held,* in the case of a deed of gift between Mahomedans, that it was no ground for cancellation of the deed that possession of the property, the subject of the deed, not having been made over to the donee, the deed might be, according to the Mahomedan law, inoperative. UMRAO BIBI v. JAN ALI SHAH [I. L. R., 20 All., 465

66. ———— *Want of possession—Essentials for valid gift.*—Delivery and seisin are, under the Mahomedan law, the essence of a gift, and therefore no right of any description passes without them. A donor therefore must be in possession. *Mohin-ud-din v. Manchershah, I. L. R., 6 Bom., 650,* referred to and followed.

down that in a gift seisin is necessary and absolutely indispensable to the establishment of a proprietary right. *Kali Das Mullick v. Kanhya Lal Pandit, I. L. R., 11 Calc., 121,* distinguished. MEHERALI v. TAJUDIN . . . I. L. R., 13 Bom., 156

67. ———— *Gift of life-estate—Want of possession in donee.*—A grant of a life-estate is invalid under the Mahomedan law. The grantee in such a case would take an absolute estate. A Mahomedan executed a deed by which he settled his property in wakf on his two wives and

should go to her surviving aulad; that if a wife and her aulad ceased to exist, their share should go to the other wife and her aulad; that on the

life-estates granted to his wives and daughters, because the donor had not parted with possession of the property till his death, and, secondly, because the

MAHOMEDAN LAW—GIFT—*continued.*

3. VALIDITY—*continued*

68. ——— *Hiba-bil-iwaz—Gift made in consideration of services rendered—Donor not in possession—Possession not delivered to donee*—The fundamental conception of hiba-bil-iwaz, or a gift for an exchange as understood in the Mahomedan law, is that it is a transaction made up of two separate acts of donation, i.e., of mutual or reciprocal gifts of specific property between two persons, each of whom is alternately donor and donee. It does not include the case of a gift in consideration only of natural love and affection or of services or favours rendered. Nor does such a gift fall under the category of hiba-bil-iwaz in its improper sense of sale, but it is an ordinary gift subject to all the conditions as to validity which the Mahomedan law provides. A gift of immoveable property not at any time in the possession of the donor, but in that of a trespasser, and consequently never delivered by the donor to the donee, is void under the Mahomedan law. *Kasim Hossein* v. *Sharif-un-nissa, I. L. R., 5 All., 285; Sahib-un-nissa Bibi* v. *Hafiza Bibi, I. L. R., 9 All., 213*, and *Shaikh Ibhram* v. *Shaikh Suleman, I. L. R., 9 Bom., 146*, distinguished. *Mohin-ud-din* v. *Manchershah, I. L. R., 6 Bom., 650, Mullick Abdool Guffoor* v. *Muleka, I.L. R., 10 Calc., 1112*, and *Hazara Begum* v. *Hossein Ali Khan, 12 W. R., 498*, referred to. RAHIM BAKHSH v. MUHAMMAD HASAN . . . I. L. R., 11 All., 1

69. ——— *Possession—Gift of property attached by Collector for arrears of revenue—N.-W. P. Land Revenue Act* [illegible]

684; *Rahim Bakhsh* v. *Muhammad Hasan, I. L. R., 11 All., 1*, and *Mohinudin* v. *Manchershah, I. L. R., 6 Bom., 650*, referred to. ANWARI BEGAM v. NIZAM-UD-DIN SHAH . . . I. L. R., 21 All., 165

70. ——— *Incomplete gift—Absence of relinquishment by donor.*—Where a [illegible]

71. ——— *Validity of gift—Possession—"Musha."*—A deed, which was found in effect to be a deed of gift comprising zamindari and other property, was executed on the 22nd of May 1890. It was registered on the 24th of May, and the donor died on the 26th. The deed recited: "I have placed the aforesaid donees in

MAHOMEDAN LAW—GIFT—*continued.*

3. VALIDITY—*continued.*

proprietary possession of the aforesaid property as my representatives." Mutation of names was subse- [illegible]

15 Calc., 684; L. R., 15 I. A., 81, and *Muhammad Mumtaz Ahmad* v. *Zubaida Jan, I. L. R., 11 All., 460; L. R., 16 I. A., 205*, referred to. SAJJAD AHMAD KHAN v. KADRI BEGAM

[I. L. R., 18 All., 1

72. ——— *Alleged gift by* [illegible]

local Treasury Officer. On the question, raised after the father's death, whether this was intended to transfer the ownership, or was a benami transaction, leaving the true ownership in the father, the Courts below had drawn different inferences from the proved facts. The first Court decided that the [illegible]

possession of the parties at the time, and of their subsequent conduct down to the father's death, the Judicial Committee affirmed the judgment of the High Court on the evidence, pointing out that the first Court's theory of the reservation differed from the case alleged by the defendant and from that actually made out by the plaintiff at the hearing. IBRAHIM ALI KHAN v. UMMAT-UL-ZOHRA

[I. L. R., 19 All., 267
L. R., 24 I. A., 1

73. ——— *Gift not perfected by possession—Necessity of delivery of possession—Registration.*—Under the Mahomedan law, a registered deed of gift is not valid if it is never perfected by possession. The Mahomedan law requires that the donor should be in actual or at least constructive possession, and that he should give actual or at least constructive possession to the donee. Registration is not equivalent to possession. ISMAL v. RAMJI SAMBHAJI

[I. L. R., 23 Bom., 682

74. ——— *Hiba-bil-iwaz—Settlement in lieu of dower—Possession not transferred—Validity on passing of consideration.*—A Mahomedan executed a deed of settlement of certain land in lieu of dower on his wife, who left him shortly thereafter without ever acquiring possession. On his contending that the settlement was invalid,—*Held* that a *bonâ fide* transaction by way of 'Hiba-bil-iwaz' (as this was found to be) is supported by proof of the actual [illegible]

MAHOMEDAN LAW—GIFT—*concluded.*

3. VALIDITY—*concluded.*

of the transfer under the settlement. MUHAMMAD ESUPH RAVUTAN *v.* PATTAMSA AMMAL
[I. L. R., 23 Mad., 70

4. REVOCATION.

75. ———— Power of revocation—*Irrevocable gift—Delivery of possession.*—In a suit for arrears of rent due on defendant's patni talukh, though the rate was admitted, it was pleaded that, in consequence of a dacoity having taken place in the defendant's house, she had been allowed by the plaintiff (her brother-in-law) a remission of rent annually for a certain number of years, and defendant professed her readiness to pay if the remission were

was complete at the termination of each year; in other words, delivery had been made to the donee, and it could not be recalled under the Mahomedan law, which is precise as to the impossibility of revoking a gift after delivery without the decree of a Judge or the consent of the donee. ENAET HOSSEIN *v.* KHOOBUNNISSA . . . . 11 W. R., 320

76. ———— Power of revoking gift—*Revocable gifts.*—Certain lands, choultries, and moveable property had been, by instrument in writing, given to the brother of the donor and his heirs for the purpose, in perpetuity, of keeping in repair the choultries and affording strangers the charities of shelter, and, if circumstances permitted, food also, as well as for supplying the wants of the donees, with clauses restraining alienation by them *Held* that the instrument effected a transfer of the property to the donees subject to the trust of applying the profits of the lands, etc., in perpetuity to certain charitable purposes, and was not revocable, whether the transaction be viewed as a pure trust or as a gift. The power of revoking gifts is given under the Mahomedan law only in the case of private gifts for the donee's own use, no relationship existing between the donor and the donee. GULAM HUSSAIN SAIB *v.* AGI AJAM TADALLAH SAIB. AGI AJAM TADALLAH SAIB *v.* GULAM HUSSAIN SAIB . . . . 4 Mad., 44

77. ———— Power of revocation—*Alienation by donee—Gift by father to son.*—By Mahomedan law there can be no revocation of a gift by a father to a son when the donee has alienated the thing given. WAJEED ALI *v.* ABDOOL ALI . . . . . W. R., 1864, 121

78. ———— *Deed of gift made in contemplation of marriage.*—A hiba-bil-iwaz, or deed of gift made in contemplation of marriage, is not a revocable instrument. KULSOOM *v.* AMEERUNNESSA . . . 1 Hyde, 150

MAHOMEDAN LAW—GUARDIAN.

See MAHOMEDAN LAW—MARRIAGE.
[1 Bom., 236

1. ———— Right of guardianship—*Mother—Father—Infant under seven years.*—

SHAH *v.* MAHOMED MUKEEM OODEEN. [illegible] ALI SHAH *v.* FUZEELUTTUNNISSA BEBEE
[W. R., 1864, 131

RAJ BEGUM *v.* REZA HOSSEIN . 2 W. R., 73

2. ———— *Mother—Custody of child—Male child—Female child.*—According to Mahomedan law, a mother is entitled to the custody of her child, if such child be a male, till it shall have attained the age of seven years; if such child be a female, till it shall have reached the age of puberty. IN THE MATTER OF TAYHEB ALLY
[2 Hyde, 63

3. ———— *Hizanut—The custody of female minors before puberty—Mother's right.*—By the Mahomedan law the mother is entitled to the custody of a female minor who has not attained her puberty, in preference to the husband. NUR KADIR *v.* ZULEIKHA BIBI
[I. L. R., 11 Calc., 649

4. ———— *Minors, Custody of—Mother.*—According to the Shiah school of the Mahomedan law, a mother is entitled to the custody of her female children unless she has been guilty of unchastity. IN THE MATTER OF HOSSEINI BEGUM
[I. L. R., 7 Calc., 434

5 ———— *Mother—Paternal uncle—Minors, Custody of.*—According to Mahomedan law, a mother has a preferential right over the paternal uncle to the guardianship of minors and to the custody of their persons. ALIMODEEN MOALLEM *v.* SYFOORA BIBEE . . 6 W. R., Mis., 125

6. ———— *Mother, Re-marriage of.*—Under the Mahomedan law, the mother is of all persons best entitled to the custody of infant children up to the age of puberty; but her right is made void by marriage with a stranger. BEEPHEY BIBEE *v.* FUZULOOLLAH . . 20 W. R., 411

7. ———— *Custody of minor son—Mother, Right of.*—According to the Mahomedan law, a mother has the right of custody of the person of her minor son up to seven years of age. *Quære*—Where she does not maintain him, has she the right of custody and control after that age as against a relation on the father's side? IN THE MATTER OF AMEEROONISSA . 11 W. R., 207

8. ———— *Girl not having attained puberty—Grandmother—Maternal grandmother as guardian—Act IX of 1861, s. 3.*—Under the Mahomedan law, the grandmother is entitled to the guardianship of a minor female child in preference to the child's paternal uncle, where such child, although married to a minor, has not attained puberty. BHOOCHA *v.* ELAHI BUX . I. L. R., 11 Calc., 574

MAHOMEDAN LAW—GUARDIAN —*continued.*

9. ——— ——— *Custody of children—Act IX of 1861, s. 5—Appeal.*—The Mahomedan law takes a more liberal view of the mother's right with regard to the custody of her children than does the English law, under which the father's title to the custody of his children subsists from the moment of their birth, while under the Mahomedan law a mother's title to such custody remains till the children attain the age of seven years. An application was made by a Mahomedan father under s. 1 of Act IX of 1861 that his two minor children, aged respectively twelve and nine years, should be taken out of the custody of their mother and handed over to his own custody. The application having been rejected by the District Judge, an appeal was preferred to the High Court as an appeal from an order. It was objected to the hearing of the appeal that, in view of s. 5 of Act IX of 1861, the appeal should have been as from a decree, and should have been made under the rules applicable to a regular appeal. *Held* that, looking to the peculiar nature of the proceedings, the objection was a highly technical one, and as all the evidence in the case was upon the record and was all taken down in English, it would only be delaying the hearing of the appeal upon very inadequate grounds if the objection were allowed. *Held* also that, according to the principles of the Mahomedan law, the appellant was by law entitled to have the children in his custody, subject always to the principle, which must govern a case of this kind, that there was no reason to apprehend that by being in such custody they would run the risk of bodily injury, and that (without saying that this exhausted the considerations that might arise, warranting the Court in refusing

10. ——— ——— *Guardianship of female minor—Female minor, Right to custody of*

11. ——— ——— *Minor—Guardian of property—Certificate of guardianship*—Under the Mahomedan law, the brother of the mother of a female minor, whose parents are dead, is entitled, in preference to a mere stranger, to the guardianship of the property of the minor, unless it be shown that he is in some way unfit to take charge of such property. IN THE MATTER OF THE PETITION OF IMAM BUKSH. IMAM BUKSH *v.* THACKO BIBEE

[I. L. R., 9 Calc., 599

12. ——— ——— *Sister—Minor, Custody of—Prostitute*—*Held* where the plaintiff sued for the custody of her minor sister, as her legal guardian under Mahomedan law, that the fact of the plaintiff being a prostitute was, although she was legally entitled to the custody of such minor, a sufficient reason for dismissing the suit in the interests of such minor. ABASI *v.* DUNNE

[I. L. R., 1 All., 598

13. ——— ——— *Uncle—Nephew*

14. ——— ——— *Suit for restitution of minor wife in custody of her mother*—The plaintiff sued to recover *M*, who was ten years of age, alleging that he had been married to her, that

minor, and also on the ground that she was only ten years of age *Held* that the plaintiff's suit was properly dismissed. WAZEER ALI *v.* KAIM ALI

[5 N. W., 196

15. ——— ——— *Sale by guardian of property of minor—Purchaser, Right of.*—Under the Mahomedan law, a sale by a guardian of property belonging to a minor is not permitted otherwise than in case of urgent necessity or clear advantage to the infant. A purchaser from such guardian cannot defend his title on the ground of the *bona fides* of the transaction. An elder brother is not in the position of a guardian having any power as such over the property of his minor sisters BUKSHAN *v.* MALDAI KOOERI . . 3 B. L. R., A. C., 423

S. C. BUKSHUN *v.* DOOLBUN . 12 W. R., 337

16. ——— ——— *Brothers.*—Under

17. ——— ——— *Legal necessity—Sale.*—The question of legal necessity does not necessarily arise in cases of sale under the Mahomedan law, though it may properly be an element for consideration when the conduct of a guardian is called

18. ——— ——— *Sale of minor's property—Validity of such sale—Sanction of sale*

MAHOMEDAN LAW—GIFT—*concluded.*

3. VALIDITY—*concluded.*

of the transfer under the settlement. MUHAMMAD ESUPH RAVUTAN *v.* PATTAMSA AMMAL [I. L. R., 23 Mad., 70

4. REVOCATION.

75. ——— **Power of revocation**—*Irrevocable gift—Delivery of possession.*—In a suit for arrears of rent due on defendant's patni talukh, though the rate was admitted, it was pleaded that, in consequence of a dacoity having taken place in the defendant's house, she had been allowed by the plaintiff (her brother-in-law) a remission of rent annually for a certain number of years, and defendant professed her readiness to pay if the [illegible]

[illegible] being able to make good the amount, at once took this method of assisting his connexion. *Held* that the gift (or remission of rent for the years in suit) was complete at the termination of each year; in other words, delivery had been made to the donee, and it could not be recalled under the Mahomedan law, which is precise as to the impossibility of revoking a gift after delivery without the decree of a Judge or the consent of the donee. ENAET HOSSEIN *v.* KHOOBUNNISSA . . . . 11 W. R., 320

76. ——— **Power of revoking gift**—*Revocable gifts.*—Certain lands, choultries, and moveable property had been, by instrument in writing, given to the brother of the donor and his heirs for the purpose, in perpetuity, of keeping in repair the choultries and affording strangers the charities of shelter, and, if circumstances permitted, food also, as well as for supplying the wants of the donees, with clauses restraining alienation by them. *Held* that the instrument effected a transfer of the property to the donees subject to the trust of applying the profits of the lands, etc., in perpetuity to certain charitable purposes, and was not revocable, whether the transaction be viewed as a pure trust or as a gift. The power of revoking gifts is given under the Mahomedan law only in the case of private gifts for the donee's own use, no relationship existing between the donor and the donee. GULAM HUSSAIN SAIB *v.* AGI AJAM TADALLAH SAIB. AGI AJAM TADALLAH SAIB *v.* GULAM HUSSAIN SAIB . . . . . 4 Mad., 44

77. ——— **Power of revocation**—*Alienation by donee—Gift by father to son.*—By Mahomedan law there can be no revocation of a gift by a father to a son when the donee has alienated the thing given. WAJEED ALI *v.* ABDOOL ALI . . . . . . W. R., 1864, 121

78. ——— *Deed of gift made in contemplation of marriage.*—A hiba-bil-iwaz, or deed of gift made in contemplation of marriage, is not a revocable instrument. KULSOOM *v.* AMEERUNNISSA . . . 1 Hyde, 150

MAHOMEDAN LAW—GUARDIAN.

See MAHOMEDAN LAW—MARRIAGE. [1 Bom., 236

1. ——— **Right of guardianship**—*Mother—Father—Infant under seven years.*—According to Mahomedan law, the mother is entitled, in preference to the father, to the custody of an infant under seven years of age. FUTTEH ALI SHAH *v.* MAHOMED MUKEEM OODEEN. FUTTEH ALI SHAH *v.* FUZEELUTTUNNISSA BEBEE [W. R., 1864, 131

RAJ BEGUM *v.* REZA HOSSEIN . 2 W. R., 73

2. ——— *Mother—Custody of child—Male child—Female child.*—According to Mahomedan law, a mother is entitled to the custody of her child, if such child be a male, till it shall have attained the age of seven years; if such child be a female, till it shall have reached the age of puberty. IN THE MATTER OF TAYHEB ALLY [2 Hyde, 63

3. ——— *Hizanut—The custody of female minors before puberty—Mother's right.*—By the Mahomedan law the mother is entitled to the custody of a female minor who has not attained her puberty, in preference to the husband. NUR KADIR *v.* ZULEIKHA BIBI [I. L. R., 11 Calc., 649

4. ——— *Minors, Custody of—Mother.*—According to the Shiah school of the Mahomedan law, a mother is entitled to the custody of her female children unless she has been guilty of unchastity. IN THE MATTER OF HOSSEINI BEGUM [I. L. R., 7 Calc., 434

5. ——— *Mother—Paternal uncle—Minors, Custody of.*—According to Mahomedan law, a mother has a preferential right over the paternal uncle to the guardianship of minors and to the custody of their persons. ALIMOODEEN MOALLEM *v.* SYFOORA BIBEE . . 6 W. R., Mis., 123

6. ——— *Mother, Remarriage of.*—Under the Mahomedan law, the mother is of all persons best entitled to the custody of infant children up to the age of puberty; but her right is made void by marriage with a stranger. JEEBUNN BIBEE *v.* FUZULOOLLAH . . 20 W. R., 411

7. ——— *Custody of minor son—Mother, Right of.*—According to the Mahomedan law, a mother has the right of custody of the person of her minor son up to seven years of age. *Quære*—Where she does not maintain him, has she, as against a relation on the father's side, the right of custody and control after that age? IN THE MATTER OF AMEEROONISSA . 11 W. R., 297

8. ——— *Girl not having attained puberty—Grandmother—Maternal grandmother as guardian—Act IX of 1861, s. 3.*—Under the Mahomedan law, the grandmother is entitled to the guardianship of a minor female child in preference to the child's paternal uncle, where such child, although married to a minor, has not attained puberty. BHOOCHA *v.* ELAHI BUX . I. L. R., 11 Calc., 574

MAHOMEDAN LAW—GUARDIAN —*continued.*

9. ———— *Custody of children —Act IX of 1861, s. 5—Appeal.*—The Mahomedans law takes a more liberal view of the mother's right with regard to the custody of her children than does the English law, under which the father's title to the custody of his children subsists from the moment of their birth, while under the Mahomedan law a mother's title to such custody remains till the children attain the age of seven years. An application was made by a Mahomedan father under s. 1 of Act IX of 1861 that his two minor children, aged respectively twelve and nine years, should be taken out of the custody of their mother and handed over to his own custody. The application having been rejected by the District Judge, an appeal was preferred to the High Court as an appeal from an order. It was objected to the hearing of the appeal that, in view of s. 5 of Act IX of 1861, the appeal should have been as from a decree, and should have been made under the rules applicable to a regular appeal. *Held* that, looking to the peculiar nature of the proceedings, the objection was a highly technical one, and as all the evidence in the case was upon the record and was all taken down in English, it would only be delaying the hearing of the appeal upon very inadequate grounds if the objection were allowed. *Held* also that, according to the principles of the Mahomedan law, the appellant was by law entitled to have the children in his custody, subject always to the principle, which must govern a case of this kind, that there was no reason to apprehend that by being in such custody they would run the risk of bodily injury, and that (without saying that this exhausted the considerations that might arise, warranting the Court in refusing an application for the custody of minors) there was nothing in the record in this case which disclosed any proper ground to justify the refusal of the application. IDU *v.* AMIRAN . I. L. R., 8 All., 322

10. ———— *Guardianship of female minor—Female minor, Right to custody of —Mahomedan law, Shiah sect—Act IX of 1861— Act XL of 1858, s. 27.*—A Mahomedan father of the [illegible]

KHAN. LARDLI BEGUM *v.* MAHOMED AMIR KHAN [I. L. R., 14 Calc., 615

11. ———— *Minor—Guardian of property—Certificate of guardianship—* [illegible]

that he is in some way unfit to take charge of such property. IN THE MATTER OF THE PETITION OF IMAM BUKSH. IMAM BUKSH *v.* THACKO BIBEE [I. L. R., 9 Calc., 599

12. ———— *Sister—Minor, Custody of—Prostitute.*—*Held* where the plaintiff sued for the custody of her minor sister, as her legal guardian under Mahomedan law, that the fact of the plaintiff being a prostitute was, although she was legally entitled to the custody of such minor, a sufficient reason for dismissing the suit in the interests of such minor. ABASI *v.* DUNNE [I. L. R., 1 All., 598

13. ———— *Uncle—Nephew —Next friend.*—The rule of Mahomedan law that an uncle cannot be the guardian of a minor nephew's property does not prevent an uncle representing his infant nephew under the Code of Civil Procedure as next friend in a suit. ABDUL BARI *v.* RASH BEHARI PAL . . . . . . 6 C. L. R., 413

14. ———— *Suit for restitution of minor wife in custody of her mother.*—The plaintiff sued to recover *M*, who was ten years of age, alleging that he had been married to her, that [illegible]

minor, and also on the ground that she was only ten years of age. *Held* that the plaintiff's suit was properly dismissed. WAZEER ALI *v.* KAIM ALI [5 N. W., 196

15. ———— *Sale by guardian* [illegible]

tion of a guardian having any power as such over the property of his minor sisters. BUKSHAN *v.* MALDAI KOOERI . . 3 B. L. R., A. C., 423

S. C. BUKSHUN *v.* DOOLHUN . 12 W. R., 337

16. ———— *Brothers.*—Under the Mahomedan law, remote guardians, among whom are brothers, can under no circumstances alienate the property of a minor, their guardianship only extends to matters connected with the education of their wards, and the near guardians alone have limited power over the immoveable property. RUTTON *v.* DOOMEE KHAN . . . . 3 Agra, 21

17. ———— *Legal necessity— Sale.*—The question of legal necessity does not necessarily arise in cases of sale under the Mahomedan law, though it may properly be an element for consideration when the conduct of a guardian is called [illegible]

18. ———— *Sale of minor's property—Validity of such sale—Sanction of sale*

MAHOMEDAN LAW—GUARDIAN —*continued.*

by ruling authority.—The plaintiff sued to recover her husband's share in certain property at S, to which h...
of M. ...
by the ...
tiff's hu...
the transaction ... it was proved that the sale of the property to the defendants had been approved of by *H*, who was the agent of the Governor of Bombay at S, and the representative of the ruling authority in the management of *M's* estate. The plaintiff contended that, according to Mahomedan law, it was not competent for the elder brother of a minor, as guardian, to alienate a minor's property. *Held* that the sanction of the ruling power constituted a sufficient authority for the act of the guardian, provided that the transaction was one which, according to Mahomedan law, a duly constituted guardian might have entered into on behalf of his ward. That law permits a guardian to sell the immoveable property of his ward, when the late incumbent died in debt, or when the sale of such property is necessary for the maintenance of the minor. The evidence in the present case showed that the indebtedness of *M* and the distressed condition of his heirs existed in a sufficient degree to justify the sale of the whole property of the heirs. HUSAIN BEGAM *v.* ZIA-UL-NISA BEGAM . . . I. L. R., 6 Bom., 467

19. ———————— *Minor—Infant—Guardian of property—Mortgage—Co-heirs—Infants' liability.*—In May 1881 certain co-heirs of a deceased Mahomedan mortgaged a portion of the property which had descended to them in common with others, then infants, as heirs of the deceased. The mortgage was raised for the purpose of paying off arrears of rent of a patni talukh which was a part of the property inherited from the deceased. There was no evidence to show that there were any other necessary expenses connected with the deceased's estate which had to be met, nor what that estate consisted of, nor whether the arrears of rent could or could not have been paid without having recourse to the mortgage. According to the Mahomedan law, the mortgagors were not the guardians of the property of the infants. *Held* that the shares taken by the infants as heirs of the deceased were not bound by the mortgage. BHUTNATH DEY *v.* AHMED HOSAIN . I. L. R., 11 Calc., 417

20. ———————— *Alienation by guardian to pay ancestral debts—Minor, Sale binding on.*—*H*, being in possession of certain real property on her account, and on account of her nephew ...

... other necessary purposes and wants of herself and the minors. *Held* that under Mahomedan law, and according to justice, equity, and good conscience, the sale was binding on the minors. HASAN ALI *v.* MEHDI HUSAIN . I. L. R., 1 All., 533

21. ———————— *Alienation by widow—Rights of other heirs—Minor—Mother—*

MAHOMEDAN LAW—GUARDIAN —*continued.*

Mortgage—First and second mortgagees—Suit by first mortgagee for sale of mortgaged property—Second mortgagee not made a party—Transfer of property—Act IV of 1882, ss. 78, 85—Res judicata.—Upon the death of *G*, a Mahomedan, his estate was divisible into eight shares, two of which devolved upon his son, *A*, one upon each of his five daughters, and one upon his widow, *B*. The name of *B* only was recorded in the revenue registers in respect of the zamindari property left by *G*. In 1876 *A* and *B* gave to *X* a deed of simple mortgage ...

... were described in the deed as the widow's own pro...

... the daughters of *G* obtained *ex-parte* decrees against *A* and *B* in suits brought by them to recover their shares by inheritance in the 5 biswas. In 1885 *S* brought a suit upon his mortgage of 1878, claiming the amount due thereon and the sale of the whole 5 biswas. To this suit he made defendants *A* and *B*, *G's* daughters, and *X*, alleging that the decrees of February and November 1884 were fraudulently and collusively obtained; and as to the auction sale of January 1884, that the 2½ biswas were sold subject to his mortgage, he not having been made a party to the suit brought by *X* upon the deed of 1876, and therefore not being bound by any of the proceedings taken therein or consequent thereto. It was contended that *B's* position as head of the family entitled her to deal with the property so as to bind all the members of the family, though using her name only; and it was suggested that, at the time of the mortgage of 1878, some of the daughters were minors. On behalf of the daughters it was contended (*inter alia*) that the decrees obtained by them against *A* and *B* in February 1884 were conclusive, by way of *res judicata*, against the plaintiff, who as mortgagee from *A* and *B*, claimed under a title derived from them. *Held per* MAHMOOD, J.—According to the Mahomedan law, the surviving widow, though held in respect by the members of the family, would not be entitled to deal with the property so as to bind them, and the entry of her name in the revenue registers in the place of her deceased husband would probably be a mere mark of respect and sympathy. Her position in respect of her husband's estate is ordinarily nothing more or less than that of any other heir, and even where her children are minors, she cannot exercise any power of disposition with reference to their property, because although she may, under certain limitations, act as guardian of their persons till they reach the age of discretion, she cannot exercise control or act as their guardian in respect of their property without special appointment by the ruling authority, in default of other relations who are entitled to such guardianship. Even, therefore, if some of the daughters in the present case were minors at the time of the plaintiff's mortgage, their shares could not be

MAHOMEDAN LAW—GUARDIAN—*continued.*

affected thereby They could only be so affected if circumstances existed which would furnish grounds for applying against them the rule of estoppel contained in s. 115 of the Evidence Act, or the doctrine of equity formulated in s. 41 of the Transfer of Property Act, but here no such circumstances existed. SITARAM *v.* AMIR BEGUM

[I. L. R., 8 All, 324

22. ——— ——— *Power of guardians—Sale by guardian of property to which ward's title was in dispute, and for the benefit of the latter.*—By the Mahomedan law, guardians are not at liberty to sell the immoveable property of their wards, the title to which property is not disputed, except under certain circumstances specified in Macnaghten's Principles of Mahomedan Law, Ch. VIII, cl. 14. But where disputes, existing as to the title to revenue-paying land, of which part formed the ward's shares, sold by their guardian, were thereby ended, and it was rendered practicable for the Collector to effect a settlement of a large part of the land, a fair price moreover having been obtained, the validity of the sale was maintained in favour of the purchaser as against the wards for whose benefit the transaction was. Although the sale-deed incorrectly stated the purpose of the sale to have been to liquidate debts, a statement repeated in a petition to the Collector, asking that settlement of the shares sold should be made with the purchaser, yet, on the transaction being afterwards impeached by the wards,—*Held* that it was open to the guardian to prove the real nature of the sale, and to show that it was one beneficial to them. KALI DUTT JHA *v.* ABDUL ALI

[I. L. R., 16 Calc, 627
L. R., 16 I. A., 96

24. ——— ——— *Uncle of minor—Liability of minor for act of person without authority purporting to act as the guardian of* ... pur- ... s the ... a pro- ... took ... f the minor. The minor having made default in payment,

MAHOMEDAN LAW—GUARDIAN—*concluded.*

L. R., A. C., 423; and *Girraj Bakhsh v.* ... *arnid Ali, I. L. R., 9 All., 340,* referred to. NIZAM-UD-DIN SHAH *v.* ANANDI PRASAD

[I. L. R., 18 All, 373

MAHOMEDAN LAW—INHERITANCE.

See CONVERTS . 1 Agra, F. B., 39
[2 Agra, 61
3 Agra, 82
I. L. R., 10 Bom., 1
I. L. R., 20 Bom., 53
I. L. R., 21 Bom., 181

See LUNATIC . I. L. R., 15 All., 29

See MAHOMEDAN LAW—CUSTOM.
[I. L. R., 21 Calc, 149
L. R., 20 I. A., 193

See MAHOMEDAN LAW—PRESUMPTION OF DEATH . I. L. R., 2 All., 625

See SLAVERY . I. L. R., 3 Bom., 422
L. R., 6 I. A., 137
12 Bom., 156

the cases of husband and wife Next are the distant kindred. GUJADHUR PERSHAD *v.* ABDOOLLAH

[11 W. R., 220

2. ——— Kindred related in equal

3. ——— Heirs of missing person—

... KHAN *v.* JADLE . . . . 5 W. R., 82

4 ——— Heirs of husband on death of

MAHOMEDAN LAW—INHERITANCE —*continued.*

than the heirs of quondam partners in the same mercantile house. EKIN BEBEE *v.* ASHRUF ALI [1 W. R., 152

5. ——— **Heirs of girl not validly married** -*Paternal grandmother—Mother—Half brothers or sisters*.—A marriage performed between minors in the fazolee (nominal) form, the girl's father being dead and the marriage being contracted by her paternal grandmother, was held to be invalid on the death of the girl without afterwards meeting or communicating with her husband because after arriving at puberty she had never expressed in any way assent to or dissent from the marriage. *Held* that under such circumstances the paternal grandmother of the girl was not entitled to inherit her estate, that the mother as her surviving parent was entitled to a third share thereof, and that her half brothers and sisters were entitled without prejudice to any claims by third parties to the residue. MULKA JEHAN SAHIBA *v.* MAHOMED USHKUREE KHAN [L. R., I. A., Sup. Vol., 192 : 26 W. R., 26

6. ——— **Estate limited to take effect in favour of a person after another's death.** —It is not consistent with Mahomedan law to limit an estate to take effect after the determination, or the death of the owner, of a prior estate by way of what is known to English law as a vested remainder so as to create an interest which can pass to a third person before the determination of the prior estate. ABDUL WAHID KHAN *v.* MURAN BIBEE [I. L. R., 11 Calc., 597: L. R., 12 I. A., 91

7. ——— **Primogeniture, Custom of**— *Exclusion of females from inheritance*.—Observations on the law laid down by the Privy Council regarding the custom of primogeniture and the exclusion of females and other heirs from inheritance. MUHAMMAD ISMAIL KHAN *v.* FIDAYAT-UN-NISSA [I. L. R., 3 All., 723

8. ——— *Proof of custom* —

thers for a long course of years, two of the members having in former trials had their rights to exclusive inheritance upheld by formal decisions.—*Held* by the High Court that, in the absence of any sanads declaring the contrary, the practice of succession by primogeniture must be accepted as prevailing on the estate. MAHOMED AKUL BEG *v.* MAHOMED KOTUM BEG . . . . . 25 W. R., 199

9. ——— **Adopted son.**—An adopted son cannot inherit among Mahomedans. OHIED KHAN *v.* COLLECTOR OF SHAHABAD 9 W. R., 502

10. ——— **Daughters of deceased brother**—*Brother—Sister.*—Under Mahomedan law the daughters of a deceased brother of a person who demises cannot take any share of such person's property so long as a brother and sister, or only a brother, survives. AZEEZOONNISSA *v.* KUHWAN-OOLLAH . . . . 10 W. R., 306

11. ——— **Daughter**—*Hindu embracing Mahomedan religion.*—*Held* that a Hindu family, having embraced the Mahomedan religion, is bound by the laws of that religion as regards succession, and that the appellant, the daughter, was entitled under that law to inherit from her father. SOJAN *v.* ROOP RAM . . . . . 2 Agra, 61

[15 W. R., 200

13. ——— *Brothers—Consanguinity - Nasab.*—The children of fornication or adultery (wahid-uz-zina) have no nasib or consanguinity; hence, the right of inheritance being founded on nasab, one illegitimate brother cannot succeed to the estate of another. SHAHEBZADI BEGUM *v.* HIMMUT BAHADUR [4 B. L. R., A. C., 103 : 12 W. R., 512

S. C. affirmed on review. HIMMUT BAHADUR *v.* SHAHEBZADI BEGUM . . 14 W. R., 125

—Children— —Cos- mother tled to ntestate

after he has attained to man's estate, and having neither wife nor legitimate child. The Mahomedan law is not applicable to the illegitimate child of a Mahomedan woman brought up and dying a Christian. NANCY *alias* ZUHOORUN *v.* BURGESS [1 W. R., 272

15. ——— **Residuaries**—*Descendants in main line of paternal great-grandfather.*—By Mahomedan law, descendants in the male line of the paternal great-grandfather of an intestate are within the class of "residuary" heirs, and entitled to take, to the exclusion of the children of the intestate's sisters of the whole blood. MOHIDIN AHMID KHAN *v.* MUHAMMAD . . . . 1 Mad., 92

S. C. MOHEDEEN AHMED KHAN *v.* MAHOMED [1 Ind. Jur., O. S., 132

16. ——— *Descendants of paternal grandfather's brother.*—According to the Mahomedan law, descendants of a paternal grandfather's brother are entitled to rank among residuaries, and as such are preferable heirs to granddaughters. SHOWKUT ALI *v.* AHMUD ALY. MEHER ALI *v.* SHOWKUT ALI . . . 8 W. R., 39

17. ——— *Step-sister*.—A step-sister of a deceased proprietor is, according to Mahomedan law, one of his heirs, and in the category of his residuaries. AMEERUN *v.* RUHEEMUN [2 Agra, Pt. II, 163

18. ——— *Collateral line.* ... n the col- expressly MAHOMED . R., 371

MAHOMEDAN LAW—INHERITANCE —*continued*

19. ———— *Suit by legal sharer—Simultaneous suit by residuaries.*—A suit by a Mahomedan widow (legal sharer) against her sons (residuaries) for her share of the property left by her deceased husband is no bar to a suit being brought by some of the sons against the others for their shares. IMAM SAHEB *v.* KASIM SAHAB [11 Bom., 102

20. ———— *Hereditary Offices Act Amendment Act (Bom. Act V of 1886), s. 2—Succession to vatan becoming the property of widow and daughter—Construction of statute.*—S. 2 of Bombay Act V of 1886 is not retrospective. A vatan having devolved on the widow and daughter of a deceased Mahomedan as his heirs, and each having become owner of her share in it, in so far as a vatan can be held in ownership,—*Held* that on the death of the widow in 1890, leaving no qualified male heirs, the daughter was entitled to succeed as her heir. RAHIMKHAN *v.* FATU BIBI BINTESAHEB KHAN I. L. R., 21 Bom., 118

21. ———— Widow's rights to "return" —*Absence of distant kindred.*—By the Mahomedan law of inheritance, in default of other sharers and in the absence of distant kindred, the widow is entitled to the "return" to the exclusion of the fisc. MAHOMED ARSHAD CHOWDHRY *v.* SAJIDA BANOO [I. L. R., 3 Calc., 702: 2 C. L. R., 46

22. ———— Distant kindred—"*Return*" —*Widow of the deceased—Heirs.*—Under the Mahomedan law, a widow has no claim to share in the "return" or residue of her deceased husband's estate as against other heirs. KOONARI BIBI *v.* DALIM BIBI [I. L. R., 11 Calc., 14

23. ———— Widow—Right to "return." —As a general rule, a widow takes no share in "the return," *i.e.*, on failure of residuaries; but some

24. ———— Sister a residuary with daughters—*Son of father's paternal uncle.*—A Mahomedan lady died, leaving a husband, two daughters, a sister, and the son of her father's

25. ———— Sister.—Under the Mahomedan law, a sister is entitled to obtain a share of the estate left by her deceased brother. BOOLINISHAREE BIBEE *v.* BUKAOOLLAH 17 W. R., 140

26. ———— Sister's son—*Widow.*—Accord-

27. ———— Childless widow—*Shiah law.* —According to the law of the Shiah sect, a childless widow is not entitled to share in the immoveable property left by her husband, but only in the value of the materials of the houses and buildings upon the land. TOONANJAN *v.* MEHNDEE BEGUM [3 Agra, 13

28. ———— *Immoveable property.*—Under the Mahomedan law, which governs

29. ———— *Inheritance by childless widows, Shiah sect.*—The childless widow of a Mahomedan of the Shiah school is not entitled to any share in the land left by her husband. ALI HUSSAIN *v.* SAJUDA BEGUM [I. L. R., 21 Mad., 27

30. ———— *Land—Buildings.* —*Held*, following *Toonanjan* v. *Mehndee Begum, 3 Agra, 13*, that the childless widow of a Shiah Mahomedan, though she takes nothing out of her deceased husband's land, inherits a share of the buildings left by him. UMARDARAZ ALI KHAN *v.* WILAYAT ALI KHAN . I. L. R., 19 All., 169

See AGA MAHOMED JAFFER BINDANIM *v.* KOOLSOM BIBEE. KOOLSOM BIBEE *v.* AGA MAHOMED JAFFER BINDANIM . I. L. R., 25 Calc., 9 [L. R., 24 I. A., 196 1 C. W. N., 449

31. ———— Widow and daughters.—According to Mahomedan law, a widow and two daughters are entitled between them to nineteen twenty-fourths of the property of their deceased husband and father in the proportion of one-eighth and two-thirds. MAHOMED RUHWAN KHAN *v.* KHAJAH BUKSH . 5 W. R., 221

32. ———— Khoja Mahomedans, Custom of—*Succession to property of widow dying intestate.*—By the custom of the Khoja Mahomedans, when a widow dies intestate and without issue, property acquired by her from her deceased husband does not descend to her own blood-relations, but to

KHATAV *v.* PARDHAN-MANJI [2 Bom., 292: 2nd Ed., 276

to

Al

S. C. KHYRATUN *v.* AMANEE . 11 W. R., 212

34. ———— *Daughter.*—*Semble*—According to the Mahomedan law, want of chastity in a daughter, before or after the death

MAHOMEDAN LAW—INHERITANCE
—*continued.*

of her father, whether before or after her marriage, is no impediment to her inheritance. NOROYARAIN ROY v. NEEMAEECHAND NEOGY . 6 W. R., 303

35. ———————— *Co-sharers—Suit for possession of a share in the property of a Mahomedan family—Right of suit.*—In a suit in 1822 between the members of a family following the Mahomedan law of inheritance, in which the plaintiffs sued as sharers for the recovery of their share in certain property, one of the defendants pleaded that a paramba, part of the property in dispute, was not subject to division, but this plea was unsuccessful, and a decree was passed for the plaintiffs. The present suit was brought by a mortgagee from one of the defendants in the former suit (who had not appeared in that suit, and against whom therefore the decision had been *ex-parte*) to recover his share of the above-mentioned paramba, the subject-matter of his mortgage; the mortgagor was joined as defendant, among others, including the defendant who had raised the plea above stated. This plea was repeated by the same person. *Held*, distinguishing *Venkatarama v. Labai Meera, I. L. R., 13 Mad., 275*, on the ground that the parties in the present case were governed by the Mahomedan law of inheritance, that the suit was maintainable. A co-sharer by Mahomedan law has a right to a specific share in each item of property left by the person from whom he inherits, and can sue to recover that share from any person in possession of the property. CHANDU v. KUNHAMED

[I. L. R., 14 Mad., 324

36. ———————— *Joint property—Partition—Suit for share of such property—Share allotted to defendant in same suit on payment of Court-fees.*—In the Presidency of Bombay a suit for partition of an inheritance by Mahomedans is hardly distinguishable from a partition suit by Hindus. In such a suit, if a defendant asks at the proper time to have his share divided off and allotted to him, such relief should be granted to him on payment of the necessary Court-fees. ABDUL KADAR v. BAPUBHAI . . I. L. R., 23 Bom., 188

37. ———————— *Sunni and Shiah sects—Rules of descent—Evidence as to deceased having been a Sunni.*—A Mahomedan widow, who

38. ———————— *Renunciation of right to inherit—Presumption of relinquishment*

MAHOMEDAN LAW—INHERITANCE
—*concluded.*

from acts of parties—Widow.—In a suit in the nature of ejectment, by principal respondent as residuary heir according to the Mahomedan law of a deceased person, to recover from his widow, the appellant, three-fourths of her deceased husband's estate, of the whole of which she had for upwards of eleven years been in possession, the plaintiff's title as residuary heir was put in issue, as well as other issues touching the widow's dower, etc. The Privy Council, thinking it of the utmost importance that those who had thus sanctioned a long possession should not be allowed lightly to disturb it, or to

establish the title upon which he sued. ...
to the Mahomedan law, there may be a renunciation of the right to inherit, and such a renunciation need not be expressed, but may be implied from the ceasing or desisting from prosecuting a claim maintainable against another. HURMUT-OOL-NISSA BEGUM v. ALLAHDIA KHAN

[17 W. R., P. C., 108

39. ———————— *Relinquishment of rights of inheritance—Relinquishment executed before ancestor's death.*—A Mahomedan sued to recover his share of the property of his mother, deceased. It appeared that before her death he had by a registered deed in consideration of R150 renounced all his claims on her estate. *Held* that the renunciation was binding on the plaintiff. KUNHI MAMOD v. KUNHI MOIDIN

[I. L. R., 19 Mad., 176

MAHOMEDAN LAW—JOINT FAMILY.

See LIMITATION ACT, 1877, ART. 127.
[5 W. R., 238
24 W. R., 1
I. L. R., 12 Mad., 380
I. L. R., 10 All., 100
I. L. R., 14 Bom., 70
I. L. R., 15 Mad., 57, 60
I. L. R., 16 Bom., 191
I. L. R., 13 All., 282
I. L. R., 22 Calc., 954

1. ———————— Inference of joint possession. —Where a Mahomedan lady with her daughters was found to be living with her brother, and to be supported by him from the proceeds of the patrimonial estate, it was held to be a proper and correct inference that the lady and her daughters were in possession along with the brother, who was the manager of the property. ACHINA BIBEE v. AZEEJOONISSA BIBEE . . . . . 11 W. R., 45

2. ———————— Evidence of separation—*Separate registration of names.*—The separate registry of the names of sharers in the zemindar's serishta is not proof of separation of their shares. OBEEDOOLLAH KHAN v. KEDUL LALL MITTER

[13 W. R., 124

MAHOMEDAN LAW—JOINT FAMILY —*continued.*

3. ——— *Onus probandi* —*Registration of land in one name.* —In a dispute between two grandsons as to proprietary right in a [illegible]

grandson claiming against another, and the *onus probandi* placed on the one claiming to be sole possessor, was more consistent with equity and common sense than a hard-and-fast rule requiring the [illegible]

family is not conclusive against the claim of those who might contend that they had nevertheless continued to retain a joint interest in the property. HYDER HOSSEIN *v.* MAHOMED HOSSEIN

[17 W. R., 185; 14 Moore's I. A., 401

4. ——— Acquisition by managing member—*Presumption.*—Additions made to the [illegible]

5. ——— Acquisition by the members severally—*Joint acquisition—Presumption.*—When the members of a Mahomedan family live in [illegible]

Abraham, 9 Moore's I. A., 195, and *Jowala Buksh v. Dharum Sing, 10 Moore's I. A., 511,* [illegible]

[illegible]

7. ——— Joint or separate acquisition —*Onus probandi—Presumption as to joint possession.*—In a suit by a member of a Mahomedan family to recover possession of a share in landed property alleged to be ancestral, where defendant claimed the same as his separately acquired property,—*Held* that it was not necessary for defendant to show that he had funds sufficient to enable him to obtain the property, and that the burden of proving that the property was acquired for, and enjoyed by, the whole family jointly was upon the plaintiff. MAHOMED AFAK *v.* EKRAM ALI . . . . . . 14 W. R., 374

8. ——— Onus probandi—*Hindu customs amongst Mahomedans—Presumption when no allegation of custom made.*—*A* and *B* were two brothers, Mahomedans, who lived together in commensality. *A*, whilst so living with his brother, purchased certain lands under a conveyance executed by the vendor and *A*. In a suit by the heirs of *B* against the heirs of *A* to obtain possession of such lands, in which they alleged they had been dispossessed by the heirs of *A*, the Court found the land to be joint family property and to have been purchased with joint funds. On appeal, the onus of proving that the land was purchased by *A* alone was put upon *A*. *Held* that, there being no allegation that the parties had adopted the Hindu law of property, the Judge, by applying to Mahomedans the presumption of Hindu law, had cast the onus on the wrong party. ABDOOL ADOOD *v.* MAHOMED MAKMIL

[I. L. R., 10 Calc., 562

9. ——— Liability of family for necessaries—*Marriage expenses.*—*A* and *B*, who were Mahomedans living joint in food and estate, separated in Kartick 1279, and at the time of the separation entered into an agreement that, "if claims relating to the joint estate are brought on the ground that they are debts due on account of the time, we were joint and living in commensality, then I, *A*, and I, *B*, will pay such claims according to what is just in equal shares. If either of us do not pay and one of us shall pay the share of the other, then the person who has paid shall recover from the other the amount he has paid for the other." After the separation, a decree was obtained against *A* for the price of certain clothes supplied to him for his marriage, which took place while *A* and *B* were joint, and *A*, having paid the amount of this decree, sued *B* for one half of the amount so paid. *Held* that the debt was not incurred in a matter necessary to the existence of the family, but for the individual benefit of *A*, and that, as in a Mahomedan family the individual benefited, and not the family, is liable for expenses incurred for the benefit of any particular member, *A* alone was liable for the debt. *Held* also that the agreement had reference only to such claims as the family were jointly liable for. ALIMUNNESSA KHATUN *v.* HASSAN ALI . . . . . . 8 C. L. R., 378

MAHOMEDAN LAW—KAZI.

1. ——— Appointment of Kazi—*Hereditary office—Bom. Reg. XXVI of 1827—Act XI of 1864.*—The enactment of Bombay Regulation XXVI of 1827 was adverse to any supposition that

MAHOMEDAN LAW—KAZI—*continued.*

the office of kazi could be hereditary. The repeal of that Regulation by Act XI of 1864 left the Mahomedan law as it stood before the passing of that Regulation; and that law sanctioned no grant of such an office to a man and his heirs. The appointment of kazi lies exclusively with the sovereign, or other chief executive officer of the State, and ought to be made with the greatest circumspection with regard to the fitness of the individual appointed; and though the sovereign may have full power to make the watan attached to the office of kazi hereditary, yet he has, under the Mahomedan law, no power to make the office itself so. JAMAL WALLAD AHMED v. JAMAL WALLAD JALLAL I. L. R., 1 Bom., 633

2. ———— *Bom. Reg. XXVI of 1827—Act XI of 1864.*—Where a sanad granted

XXVI of 1827, relating to the appointment of kazis, was repealed by Act XI of 1864, whereby it is recited that it is inexpedient that the appointment of kazis should be made by Government. The continuance therefore by the Collector of an allowance to the plaintiff in 1867 could not be regarded as a constructive appointment of him to be kazi. DAUDSHA v. ISMALSHA I. L. R., 3 Bom., 72

3. ———— *Hereditary office —Custom—Hereditary Offices Act (Bom. Act III of 1874), s. 9.*—The office of kazi is not an hereditary office, unless perhaps by special custom of the locality Where such a custom is not established, property attached to the office is not vatan property, and the Collector has no power to make an order with respect to it under s 9 of the Hereditary Offices Act (Bombay Act III of 1874). *Jamal valad Ahmed v. Jamal valad Jallal, I. L. R., 1 Bom., 633,* and *Daudsha v. Ismalsha, I L. R., 3 Bom., 72,* followed BABA KAKAJI SHET SHIMPI v. NASSARUDDIN VALAD AMINUDDIN KAZI [I. L. R., 18 Bom., 103

See DHARAMDAS SAMBHUDAS v. HAFASJI [I. L. R., 19 Bom., 250

4 – *Power to appoint kazi of Bombay—Disturbance of office—Right of suit—Fees received by kazi.—Semble*—The power

to make such appointment has never vested with the Mahomedan community at large When it was shown that the plaintiff had acted as kazi of Bombay for more than twenty years, and the defendant, in an action brought against him for disturbing the plaintiff in his office of kazi, was unable to show that the plaintiff had been illegally appointed, it was held that the plaintiff so acting as kazi could maintain an action against the defendant who so disturbed him in his office, without proving that he, the plaintiff, had been legally appointed. The sums received by the kazi of Bombay in respect of his office of kazi are not mere gratuities, but are fixed and certain payments annexed to the discharge of official duties, and are therefore sums in respect of the privation whereof by a wrongful intruder an action either for money had and received or for disturbance in the office will lie. MUHAMMAD YUSSAB v AHMED [1 Bom., Ap, 18

5. ———— *Court vested with*

KABEER 3 C. W. N., 155

MAHOMEDAN LAW—MAINTENANCE.

1. ———— Husband's liability for maintenance—*Wife not arrived at puberty living with parents.—Quære*—In the case of Mahomedans, where a wife, although legally married, has not attained the age of puberty, is there a liability on the part of the husband to support her as long as she remains under the roof of her father? KOLASHUN BIBEE v. DIDAR BUKSH [24 W. R., Cr., 44

2. ———— *Husband and wife—Decree for past maintenance*—In a suit for maintenance by a Mahomedan wife against her husband, where there was no decree or agreement for maintenance before suit,—*Held*, reversing the decision of the Court below, that the decree should not have awarded past maintenance, but that maintenance should have been made payable only from the date of the decree. *Held* also that future maintenance should have been given only during the continuance of the marriage, and not during the term of the plaintiff's natural life. ABDOOL FUTTEH MOULVIE v. ZABUNNESSA KHATUN [I. L. R., 6 Calc., 631: 8 C. L. R., 242

3. ———— Wife's right to maintenance—*Ascertainment of rate—Right of suit.*—According to Mahomedan law, until there has been an ascertainment of the rate at which maintenance is payable, no right to maintenance accrues to a wife on which she can found a suit. MAHOMED MUSEEHOOD-DEEN KHAN v. MUSEEHOODDEEN [2 N. W., 173

4. ———— Agreement for maintenance —*Re-conveyance by wife (on consideration of maintenance) of her property received for dower.*—Where a Mahomedan wife, in re-conveying to her husband the property received from him in lieu of dower, took from him a written agreement in which he covenanted to pay her a certain sum of money annually without objection or demur,—*Held* that the husband could not avoid payment on any of the pleas on which a Mahomedan husband could avoid the payment of maintenance to a

MAHOMEDAN LAW—MAINTENANCE —*concluded.*

wife. YUSOOF ALI CHOWDHRY *v.* FYZOONISSA KHATOON CHOWDRAIN . . 15 W. R., 296

5. ——— Mutta wife—*Mutta form of marriage—Criminal Procedure Code (Act X of 1872), s. 536—Shiah sect.*—Under the law of the Shiah sect of Mahomedans, a mutta wife is not entitled to maintenance, but such a provision of the law does not interfere with the statutory right to maintenance given by s. 536 of the Code of Criminal Procedure. IN THE MATTER OF THE PETITION OF LUDDUN SAHIBA. LUDDUN SAHIBA *v.* KAMAR KUDAR . I. L. R., 8 Calc., 736: 11 C. L. R., 237

MAHOMEDAN LAW—MARRIAGE.

See BIGAMY. . I. L. R., 18 Calc., 264
[I. L. R., 19 Calc., 79

See CASES UNDER MAHOMEDAN LAW—ACKNOWLEDGMENT

See MAHOMEDAN LAW—DOWER.
[I. L. R., 8 All., 149
I. L. R., 1 All., 483, 506
I. L. R., 4 All., 205
I. L. R., 2 All., 831
I. L. R., 23 Mad., 371

See MARRIAGE . I. L. R., 25 Calc., 537

1. ——— Validity of marriage—*Requisites for valid marriage.*—Under the Shiah as well as the Sunni law, any connection between the sexes which is not sanctioned by some relation founded upon contract or upon slavery is denounced as "zina," or fornication. Both schools prohibit sexual intercourse between a Mooslnab, *i.e.*, a Mahomedan woman and a man who is not of her religion. According to the Shiah law, marriage must in all cases be lawful, except when there is error on the part of both or either of the parents. HIMMUT BAHADOOR *v.* SHAHEBZADI BEGUM . . 14 W. R., 125

Affirming on review S. C. SHAHEBZADI BEGUM *v.* HIMMUT BAHADOOR
[12 W. R., 512: 4 B. L. R., A. C., 103

2. ——— *Valid marriage, Essentials of—Sufficiency of evidence.*—In a crimi-

3. ——— *Nikah marriage.*—The nikah form of marriage is well known and established among Mahomedans. The issue of such a marriage is legitimate by Mahomedan law. MONEEROODDEEN *v.* RAMDHUN BAJEEKUR
[18 W. R., Cr., 28

4. ——— *Woman's right to choose husband—Guardian—Marriage without*

MAHOMEDAN LAW—MARRIAGE —*continued.*

consent of father.—According to the doctrine of the Mussulman teacher, Abu Hanifa, a Mussulman female, after arriving at the age of puberty without having been married by her father or guardian, becomes legally emancipated from all guardianship, and can select a husband without reference to the wishes of the father or guardian; but according to the doctrine of Shafi, a virgin, whether before or after puberty, cannot give herself in marriage without the consent of her father. After attaining puberty, a female of any one of the four sects can elect to belong to whichever of the other three sects she pleases, and the legality of her subsequent acts will be governed by the tenets of the Imam whose

IBRAHIM *v.* GULAM AHMED . 1 Bom., 236

5. ——— *Marriage of minor—Assent of wife after puberty.*—A ceremony of marriage was performed between Mahomedan minors in the fazolee (nominal) form; the girl's father

Shiahs the matter ought to be propounded to her, so that she may advisedly give or withhold her assent. MULKA JEHAN SAHIBA *v.* MAHOMED USHKUREEE KHAN
[L. R., I. A., Sup. Vol., 192: 26 W. R., 26

6. ——— *Consent of parents—Inequality of parties.*—*Held* that under Mahomedan law the bride's father can set aside the marriage on the ground of inequality between the

7. ——— *Infant—Consent*

[illegible] B. L. R., 160

MAHOMEDAN LAW—MARRIAGE —*continued.*

8. ——— *Consent of mother.*—Where the nearest guardian of a minor was precluded from giving his consent to the marriage of the minor, the marriage contracted by consent of the mother of the minor was held to be valid by Mahomedan law. KALOO v. GURIBOLLAH

[13 B. L. R., 163 note: 10 W. R., 12

9. ——— *Marriage with living wife's sister—Legitimacy of children of such marriage—Acknowledgment, Effect of, on illegitimate children.*—Under the Mahomedan law, marriage with the sister of a wife who is legally married is void. The children of such marriage are illegitimate and cannot inherit. *Shureefoonisa v. Khizuroonisa Khanum, 3 S. D. A. Sel. Rep., 210,* referred to. The doctrine of acknowledgment is not applicable to a case in which the paternity of the

[I. L. R., 23 Calc., 130

10. ——— *Shiahs—Marriage*

DAS . . . . . I. L. R., 19 All., 375

11. ——— *Mutta form of marriage—Repudiation—Divorce.*—The mutta form of marriage does not admit of repudiation under the law of the Shiah sect of Mahomedans. *Quære*—Whether the form of divorce called zihar may be exercised in the mutta form of marriage. IN THE MATTER OF THE PETITION OF LUDDUN SAHIBA. LUDDUN SAHIBA v. KAMAR KUDAR

[I. L. R., 8 Calc., 736: 11 C. L. R., 237

12. ——— Presumption of marriage—*Cohabitation—Presumption of legitimacy of offspring.*—By the Mahomedan law continual cohabitation and acknowledgment of parentage is presumptive evidence of marriage and legitimacy. HIDAYUTOOLLAH v. RAI JAN KHANUM

[3 Moore's I. A., 295

S. C. SHUMS-OON-NISSA KHANUM v. RAI JAN KHANUM . . . . 6 W. R., P. C., 52

13. ——— *Cohabitation—Acknowledgment of wife and of legitimacy of children.*—According to Mahomedan law, continued open

Even where the cohabitation has been casual only, and there has been no acknowledgment of the woman as his wife, or the issue as his children, the fact of such cohabitation raises a presumption of marriage, and that the children are legitimate; but in such a

MAHOMEDAN LAW—MARRIAGE —*continued.*

case the presumption may be rebutted. NAWABUNNISSA v FUZOOLOONISSA. NAWABUN v. JUMEERUN

[Marsh., 428

S. C. FUZLOONNISSA v. NAWABUNNISSA

[2 Hay, 479

14. ——— *Cohabitation.*—According to Mahomedan law, cohabitation as husband and wife will raise a presumption of a marriage if the parties are Mahomedans, or persons between whom a valid marriage can be celebrated. MONOWAR KHAN v. ABDOOLLAH KHAN . 3 N. W., 177

15. ——— *Legitimacy, Proof of—Cohabitation.*—The mere residence of a woman

and that the woman was treated as a wife, and ... as such, and not as a servant. KUREEMOONISSA v. ATTAOOLLAH . . . . . 2 Agra, 211

16. ——— *Legitimacy—Cohabitation.*—If a child has been born to a father of a mother where there has been not a mere casual ... connection, and

NUM . . . . .

S. C. HIDAYUTOOLLAH v. RAI JAN KHANUM

[3 Moore's I. A., 295

17. ——— *Cohabitation—Legitimacy.*—Though there is no evidence of the celebration of any marriage ceremony, still the fact of a woman having constantly lived as a married ... child

by the Privy Council in *Mahomed Bauker ... Khan v. Shurfoonissa Begum, 8 Moore's I. A., 136,* and by the High Court in *Nawabunnissa v. Fuzeeloonissa, Marsh, 428.* ASHRUFFUNNISSA v. AZEEMUN BARODA KOOERY v. ASHRUFFUNNISSA

[1 W. R., 17

18. ——— *Acknowledgment of wife.*—The acknowledgment of a wife which the ... proof of marriage should ... a man ... ating her ... essarily, ... owledg... KAPAN... R., 352

19. ——— In a suit by *A* for possession of property which belonged to her uncle *B*, the defendants *C* and *D* each alleged herself to be the wife of *B*, and each said that the

MAHOMEDAN LAW—MARRIAGE —*concluded.*

other was his concubine. *C* also set up a will in her favour by *B* *C* admitted that she had been once *B's* concubine, but alleged that she had been subsequently married to *B*. The evidence was conflicting, and the Courts below pronounced against both the marriages and also against the will. *C* alone appealed to the Privy Council, who held that lapse

20. ——————— *Celebration of pregnancy and of birth of son.*—The celebration of the seventh month of pregnancy, and the celebration of the birth of the son, are sufficient to prove the marriage and legitimacy of the son. WISE *v.* SUNDULOONISSA CHOWDHRANEE . 7 W. R., P. C., 13
[11 Moore's I. A., 177

21. ——————— *Acknowledgment of wife.*—An equivocal expression in a document executed by a Mahomedan which might be applicable to the ladies in respect to whom it is used, whether they were wives or not, cannot be considered such an express recognition of their being wives as to establish their claims as such to a share in the estate on his decease. Where a lady has cohabited with a Mahomedan for years and has had a child by him who has been openly acknowledged and treated by him as his lawful son, although there may be no evidence of the actual fact of marriage, the Court is justified in presuming a marriage. MAHATALA BIBEE *v.* AHMED HALEEMOOZOOMAN CURREEMUNNISSA BEGUM *v.* AHMED HALEEMOOZOOMAN
[10 C. L. R., 293

had again become lawful wife to the plaintiff after re-marriage AKHTAROONNISSA *v.* SHARIUTOOLLAH CHOWDHRY . . . 7 W. R., 268

MAHOMEDAN LAW—MORTGAGE.

—— Mortgage by widow—*Power to mortgage shares of minors—Mahomedan law of*

MAHOMEDAN LAW—MORTGAGE —*concluded.*

shares in the house might be ascertained and declared; that the house should be sold, and their shares in the proceeds handed over to them. The defendant pleaded that the plaintiffs' mother and adult brother *E*

to him before claiming any share in the house.

or else it must be for the benefit of the minor. The money raised by the mortgage in question was not raised for any purpose specially authorized by Mahomedan law, and the purpose for which it was raised was not for the benefit of the minor. Consequently, the widow had no authority to mortgage their shares. HURBAI *v.* HIRAJI BYRAMJI SHANJA
[I. L. R., 20 Bom., 116

MAHOMEDAN LAW—MOSQUE.

1. ——— Constitution of musjid.—Two essential conditions to the constitution of a musjid are requisite: first, that the site must be publicly appropriated to the purpose of a musjid; secondly, that public prayer should be performed in it. *Held,* in a suit to establish a right to repair and endow a mosque, that under the circumstances the condition had not been fulfilled, and therefore the suit should fail. YAKOOB ALI *v.* LUCHMUN DASS
[6 N. W., 80

2. ——— Endowment or dedication of mosque—*Muhammadans or Wahabi sect—Disturbing a religious assembly—Right to say "amin" loudly during worship.*—According to the Maho-

ing others engaged in their devotions, made any demonstration, oral or otherwise, in a mosque, and disturbance was the result. So *held* by the Full

MAHOMEDAN LAW—MOSQUE —*concluded.*

Bench. *Queen-Empress* v. *Ramzan, I. L. R., 7 All., 461,* referred to. *Per* MAHMOOD, *J.*—According to the Mahomedan ...

pronounced in a loud or in a low tone of voice; and (provided no disturbance of the public peace is caused) a Mahomedan pronouncing the word loudly, in the honest exercise of conscience, commits no offence or civil wrong. ATA-ULLAH *v.* AZIM-ULLAH [I. L. R., 12 All., 494

3. ——— **Public mosque**—*Right of Mahomedans without distinction of sect to use such mosque for the purposes of worship—Right to say "amin" loudly during worship.*—Where a mosque is a public ...

... which is contrary to the Mahomedan ecclesiastical law or which is either an offence or civil wrong though he may by such conduct ...
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fere ... with the devotion of the ordinary frequenters of the mosque, will render himself criminally liable. JANGU *v.* AHMAD-ULLAH [I. L. R., 13 All., 419

4. ——— **Dedication of mosque to** ...

... so long as he does not wilfully disturb or annoy the other members of the congregation. Non conformity on matters of ritual does not affect his right to do so. *Fazl Karim* v. *Maula Baksh, I. L. R., 18 Calc., 448 : L. R., 18 I. A., 59; Ataullah* v. *Azanullah, I. L. R., 12 All., 494;* and *Queen-Empress* v. *Ramzan, I. L. R., 7 All., 461,* referred to. ADAM SHEIK *v.* ISHA SHEIK . 1 C. W. N., 76

MAHOMEDAN LAW—PRE-EMPTION.

MAHOMEDAN LAW—PRE-EMPTION —*continued.*

See CASES UNDER PRE-EMPTION.

1. RIGHT OF PRE-EMPTION.

(a) GENERALLY.

1. ——— **Origin of right**—*Law or custom—Cessation of right.*—The right of pre-emption arises from a rule of law by which the owner of the land is bound; and it exists no longer if there ceases to be an owner who is bound by the law either as a Mahomedan or by custom. BYJNATH PERSHAD *v.* KOPILMON SINGH . . . 24 W. R., 95

2. ——— **Requisites for right**—*Extinguishment of vendor's right—Incomplete sale—Right of pre-emption.*—In a suit claiming a right ...

contracts of sale, or under the principles of Mahomedan law, no right could arise in favour of the pre-emptor. The privilege of shuffa refers to cases in which the sale has been actually completed by the extinction of the rights of the vendor. LADUN *v.* BHYRO RAM . . . . 8 W. R., 255

3. ——— *Extinguishment of vendor's right.*—Under Mahomedan law, the right of pre-emption does not arise until the seller's right of property has been completely extinguished. SOONDUR KOOER *v.* LALLA RUGHOOBUR DYAL [10 W. R., 246

BUKSHA ALI *v.* TOFEE ALI . 20 W. R., 216

4. ——— *Sales—Leases in perpetuity.*—Under the Mahomedan law, the right of pre-emption applies to sales only, and cannot be enforced with reference to leases in perpetuity like a mokurari, which (however small the reserved rent) are not sales and in which there is no "milkyut" or ownership on the part of the shuffa or pre-emption. RAM GOLAM SINGH *v.* NURSING SAHOY [25 W. R., 43

5. ——— *Perpetual lease—Sale.*—Where a co-proprietor does not part with his entire interest in land by an absolute sale, but merely grants a lease of it, even though it be a mourasi lease, the doctrine of pre-emption will not apply. *Moorooly Ram* v. *Huree Ram, 8 W. R., 106,* and *Ram Golam Singh* v. *Nursing Sahoy, 25 W. R., 43,* followed. DEWANUTULLA *v.* KAZEM MOLLA . . . I. L. R., 15 Calc., 184

6. ——— *Bonâ fide sale*—There is no right of pre-emption where there has not been a real *bonâ fide* sale according to the Mahomedan law. MOHNO BIBEE *v.* JUGGURNATH CHOWDHRY . . . . . . 2 W. R., 78

MAHOMEDAN LAW—PRE-EMPTION —*continued.*

1. RIGHT OF PRE-EMPTION—*continued.*

7. ———— *Sale—Transfer in nature of gift.*—A transfer without money or other consideration, and which is in fact a gift, is held not to be a sale to which the right of pre-emption attaches. AMEER ALI *v.* PRABUN W. R., 1864, 239

8. ———— *Gift of land*

9. ———— *Proof of right on private sale—Auction-sale.*—*Held* that in a case of private sale the right of pre-emption must be based on usage or contract, and that an instance of pre-emption in an auction-sale is not sufficient. BHAE KOONWAR *v.* ZAHOOR ALI . . 1 Agra, 258

10. ———— *Heir of pre-emp-*

11. ———— *Claim for pre-emption based upon a transaction which was a good sale under the Mahomedan law, but not under the Transfer of Property Act (IV of 1882), s. 54—Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887), s. 37.*—Where a Sunni Mahomedan transferred certain immoveable property exceeding in value R100, under such circumstances that the price was paid and possession of the property delivered to the transferee, but no sale deed was executed; on a suit for pre-emption based upon such transfer being brought, it was *held* by the Full Bench (BANERJI, J., dissenting) that the Mahomedan law was to be

applicable to persons of the Hanifia sect can arise in respect of the sale of immoveable property of the value of one hundred rupees and upwards, unless such sale has been effected according to the provision of s. 54 of Act IV of 1882." BEGAM *v.* MUHAMMAD YAKUB . . . . I. L. R., 16 All., 344

12. ———— *Rights of third persons having a claim to pre-emption where the vendee is also a person who would have a similar claim were the sale to a stranger.*—Under the Mahomedan law, even when the buyer is himself a pre-emptor, that is, a person who would have the

be determined in the same way in which they would have been determined had the buyer acquired the property by enforcing his right of pre-emption against a stranger, in the absence of the other pre-emptors, and the absentee pre-emptors had appeared subsequently and claimed pre-emption. *Moheshee Lal v. Christian, 6 W. R., 250; Teeka Dharee Singh v. Mohur Singh, 7 W. R., 260; Lalla Nowbut Lall v. Lalla Jewan Lal, I. L. R., 4 Calc., 831,* dissented from. In cases of pre-emption to which the Mahomedan law applies the rules of that law are to be administered in their entirety where they are not inconsistent with the principles of justice, equity and good conscience. *Chundo v. Hakeem Alimooddeen, 6 N. W., 28,* and *Gobind Dayal v. Inayatullah, I. L. R., 7 All., 775,* referred to. A person entitled to a right of pre-emption is not bound to claim pre-emption in respect of all the sales which may be executed in regard to the property, although every suit for pre-emption must include the whole of the property subject to pre-emption conveyed by one transfer. *Kashi Nath v. Mukhta Prasad, I. L. R., 6 All., 370,* referred to. AMIR HASAN *v.* RAHIM BAKHSH . . I. L. R., 19 All., 466

13. ———— *Invalid sale—Time when right of pre-emption arises.*—No right of pre-emption arises upon a sale which, according to Mahomedan law, is invalid, as, for instance, by reason of uncertainty in the price or the time for delivery of the thing sold; but if such sale become complete, as by the purchaser getting possession of the thing sold, then the ownership of the purchaser becomes complete, and a right of pre-emption arises, but neither ownership nor the pre-emptive right relates back to the date of the contract of sale. *Begam v. Muhammad Yaqub, I. L. R., 16 All., 344,* referred to. NAJM-UN-NISSA *v.* AJAIB ALI KHAN [I. L. R., 22 All., 343

14. ———— Exercise of right—*Re-sale—Claim after waiver upon incompleted sale.*—The right of pre-emption, according to the Mahomedan law, may be exercised upon a re-sale of the property, after a previous sale which has fallen through, and with respect to which no claim of pre-emption was made. BUSUNT KOOMAREE *v.* KALI PERSAD SINGH [Marsh., 11: 1 Hay, 32

15. ———— *Property sold in execution of decree—Right of judgment-debtor.*—The right of pre-emption cannot be exercised by a judgment-creditor in respect of the sale of property in execution of his decree. NUZMOODEEN *v.* KANYE JHA . . . Marsh., 555: 2 Hay, 651

16. ———— *Sale by public auction—Opportunity to bid.*—When property is

MAHOMEDAN LAW—PRE-EMPTION—*continued.*

I. RIGHT OF PRE-EMPTION—*continued.*

17. ———— *Repudiation of sale by seller or buyer.*—As, according to Mahomedan law, when either the seller or buyer repudiates the sale, there can be no sale, so neither can there be any right of pre-emption in such a case. OJHEOONISSA BEGUM *v.* RUSTOM ALI W. R., 1864, 219

18. ———— **Exercise of pre-emption**—*Effect of allowing pre-emption—Conditions of pre-emption.*—*Held* that the right of pre-emption, when once allowed and exercised by the pre-emptor, cannot be disputed at subsequent occasions of sale, and that neither manhood, puberty, justice, or respectability of character, are conditions of pre-emption under the Mahomedan law. PUNNA *v.* JUGGUR NATH [1 Agra, 236

Nor is indebtedness of the pre-emptor. RAM KHELAWAN RAI *v.* SHIVA DASS . 2 Agra, 76

19. ———— **Evidence of right**—*Suit to enforce right.*—In a suit to enforce a right of pre-emption, where there is other evidence, and the Court can come to a distinct finding upon it, it is not incumbent on the Court to put the purchaser upon his oath. HUNSRAJ SINGH *v.* RASH BEHAREE SINGH [7 W. R., 211

HUNSRAJ SINGH *v.* CHOKA SINGH 7 W. R., 486

20. ———— *Decision on evidence.*—Where evidence is gone into, the Court must decide according to the view it takes of the evidence, any preference which may be given to the evidence for the person claiming the right of pre-emption being given only in the event of the evidence being very evenly balanced. HUNSRAJ SINGH *v.* RASH BEHAREE SINGH . . . 7 W. R., 211

21. ———— *Nature of pre-emption—Ground for allowing right.*—The right of pre-emption is not matter of title to property, but is rather a right to the benefit of a contract, and when a claim is advanced on such a right, it must be shown that defendant is bound to concede the claim either by law or by some custom to which the class of which he is a member is subject on grounds of justice, equity, and good conscience. MOHESH LALL *v.* CHRISTIAN . . 8 W. R., 446

22. ———— *Nature of right* [illegible] n is not [illegible] gati n it [illegible] district [illegible] persons, it being for the claimant in each case to show that it attaches to the defendant. AKHOY RAM SHAHAJEE *v.* RAM KANT ROY . . . 15 W. R., 223

23. ———— **Applicability of right**—*Nature and extension of right.*—The right to pre-emption is very special in its character, and is founded on the supposed necessities of a Mahomedan family arising out of their minute subdivision of ancestral property; and as the result of its exercise is generally adverse to public interest, it will not be recognized by the High Court beyond the limits to which those necessities have been judicially decided to extend. NUSRUT REZA *v.* UMBUL KHYR BIBEE [8 W. R., 309

24. ———— *Proof of existence of custom of pre-emption.*—*Held* that a solitary case or two is not sufficient to prove the custom of pre-emption in a locality where the privilege is not binding upon the parties by positive law. BENARSEE DOSS *v.* PHOOL CHUND . . . 1 Agra, 243

25. ———— *Decisions as to prevalence of custom.*—In *Inder Narain Chowdhry* [illegible] the Court [illegible]

MOHUREE SHAHA . . . 8 W. R., [illegible]

26. ———— *Shiahs and Sunnis—Pre-emption claimed on ground of vicinage—Vendors and vendee Sunnis, pre-emptor a Shiah.*—*Held* that a Mahomedan of the Shiah sect could not maintain a claim for pre-emption based on the ground of vicinage under the Mahomedan law when both the vendors and the vendee were Sunnis. *Gobind Dayal v. Inayat-ullah, I. L. R., 7 All., 775*, and *Pir Bakhsh v. Sughra Bibi, Weekly Notes, All., 1892, 54*, referred to. QURBAN HUSAIN *v.* CHOTE [I. L. R., 23 All., 102

27. ———— *Hindus—Local custom—Sale to a stranger.*—The right of pre-emption, when it exists among Hindus, is a matter of contract or custom agreed to by the members of a [illegible] property [illegible] be governed by it, sell to any one who is a [illegible] the agreement, the land is no longer subject to pre-emption. HIRA *v.* KALLU [I. L. R., 7 All., 916

28. ———— *Hindus—Usage and custom.*—Unless a prescriptive usage and local custom be clearly established, a Hindu defendant is not bound by the Mahomedan law in a case in which a Mahomedan seeks to enforce his right of pre-emption. SHERAJ ALI CHOWDHRY *v.* RAMJAN BIBEE 8 W. R., 204 : 2 Ind. Jur., N. S., 249

HUBEERUL HOSSEIN *v.* LALLA DEWKEE NUNDUN [W. R., 1864, 75

29. ———— *Hindu purchaser.*—A claim for pre-emption under the Mahomedan law cannot be maintained against a Hindu purchaser. MOTI CHAND *v.* MAHOMED HOSSEIN KHAN . . . 7 N. W., 147

CHUNDO *v.* ALIMOODDEEN . . 6 N. W., 28 [S. C. Agra, F. B., Ed. 1874, 305

MAHOMEDAN LAW—PRE-EMPTION—*continued.*

1. RIGHT OF PRE-EMPTION—*continued.*

30. ———————— *Hindu purchaser—Mahomedan vendor and co-sharer*—Per PEACOCK, C.J., and KEMP and MITTER, JJ.—A Hindu purchaser is not bound by the Mahomedan law of pre-emption in favour of a Mahomedan co-partner, although he purchased from one of several Mahomedan co-parceners, nor is he bound by the Mahomedan law of pre-emption on the ground of vicinage.

MACPHERSON, JJ (*dissentientes*) — Wherever a Mahomedan co-sharer or neighbour has a right of pre-emption and his property is sold by his neighbour or co-sharer, also a Mussulman, his right is not defeated by the mere fact that the purchaser is a Hindu. KUDRATULLA *v.* MAHINI MOHUN SHAHA. SAYAMA KUMAR ROY *v.* JAN MAHOMED. FARMAN KHAN *v.* BHARAT CHANDRA SHAHA CHOWDHRY

[4 B. L. R., F. B., 134 : 13 W. R., F. B., 21

31. ———————— *Hindu vendor*—

Chundo v. Alim-ood-deen, 6 N. W., 28, overruled *Purno Singh v. Hurry Churn Surmah, 10 B. L. R.*, 117, followed DWARKA DOSS *v.* HUSAIN BAKSH

[I. L. R., 1 All., 564

32 ———————— *Hindu purchaser—Mahomedan vendor and pre-emptor—Act VI of 1871 (Bengal Civil Courts Act), s. 24—"Religious usage or institution"—"Parties."*—*Held* by the

but who had dealt with Mahomedans in respect of property, knowing the conditions and obligations

Courts. Also *Per* MAHMOOD, J., that the word "parties," as used in s. 24 of the Bengal Civil Courts Act, does not mean the parties to an action, but must be interpreted with reference to the inception of the right to be adjudicated upon. Also *per* MAHMOOD, J.—The right of pre-emption is not a right of "re-purchase" either from the vendor or from

33. ———————— *Hindus—Custom prevailing among Hindu — Obligation to fulfil*

34. ———————— *Hindu vendor and purchaser—Mahomedan pre-emptor—"Talab-*

express invocation of witnesses, required by the Mahomedan law of pre-emption, was not one of the incidents of such custom. *Held* that the circumstance that the plaintiff was a Mahomedan did not preclude him from claiming to enforce such right

as a condition precedent to the enforcement of such right. *Fakir Rawot v. Emam Baksh, B. L. R., Sup. Vol*, 35; *Bhodo Mahomed v. Radha*

35 ———————— *Hindus — Province of Behar.*—The custom of pre-emption has been recognized among Hindus in the province of Behar. JOY KOER *v.* SUROOP NARAIN THAKOOR

[W. R., 1864, 259

MAHOMEDAN LAW—PRE-EMPTION —*continued.*

1. RIGHT OF PRE-EMPTION—*continued.*

36. ———— *Hindus—Province of Behar.*—A native of Lower Bengal seeking his fortune in Behar would not be bound by the rule of Mahomedan law of pre-emption if nothing were shown to the contrary. BYJNATH PERSHAD *v.* KOPILMON SINGH . . . 24 W. R., 95

37. ———— *Hindus—Province of Behar.*—There is no judicial finding to the effect that the custom of pre-emption is recognized among the Hindus of the province of Behar. It is doubtful whether, even under Mahomedan law, the owners of two adjacent lakhiraj estates, wholly unconnected with one another, could either of them claim a right of pre-emption on the ground of vicinage. No such right of pre-emption on the ground of the mere vicinage has been known to exist among Hindus. KANTIRAM *v.* WOLI SAHU
[2 B. L. R., A. C., 330: 11 W. R., 251

38. ———— *Hindus—Province of Behar—Custom*—A right or custom of pre-emption is recognized as prevailing among Hindus in Behar and some other provinces of Western India. In districts where its existence has not been judicially noticed, the custom will be matter to be proved; such custom, when it exists, must be presumed to be founded on and co-extensive with the Mahomedan law upon that subject, unless the contrary be shown. The Court may, as between Hindus, administer a modification of that law as to the circumstances under which the right may be claimed, where it is shown that the custom in that respect does not go the whole length of the Mahomedan law of pre-emption; but the assertion of the right by suit must always be preceded by an observance of the preliminary forms prescribed in Mahomedan law. FAKIR RAWOT *v.* EMAMBAKSH
[B. L. R., Sup. Vol., 35: W. R., F. B., 143

RAMDULAL MISSER *v.* JHUMACK LAL MISSER
[8 B. L. R., 455: 17 W. R., 265

RAMGUTTY SURMA *v.* KASI CHUNDER SURMA
[W. R., 1864, 317

SHEOJUTTUN ROY *v.* ANWAR ALI . 13 W. R., 169

39. ———— *Christians in* [illegible]

[illegible] W. R., 200

40. ———— *Europeans—District of Cachar*—The right of pre-emption arises from a rule of law by which the owner of the land is bound. It is essential that the vendor should be subject to the rule of law. Therefore, where the vendor of certain land situate in Cachar was a European, the Court held that there was no right of pre-emption. POORNO SINGH *v.* HURRYCHURN SURMAH . 10 B. L. R., 117: 18 W. R., 440

41. ———— *Hindus—Chittagong.*—Conflicting decisions of the subordinate Courts held not to prove that the custom of the [illegible]

[illegible] W. R., [illegible]

S. C. on review, where the Judges differed. NAZIROODDEEN KHAN *v.* INDER NARAIN CHOWDHRY . . . . . 5 W. R., 237

42. ———— *Hindus of Gujarat.*—The existence of a local custom as to the right of pre-emption among the Hindus of Gujarat recognized. Such a custom, where it exists, is regulated by the rules and restrictions of the Mahomedan law. GORDHANDAS GIRDHARBHAI *v.* PRANKOR
[6 Bom., A. C., 263

43. ———— *Hindus—Law in Jessore.*—*Quære*—Whether the law of pre-emption extends to transactions as between Hindus in Jessore. MADHUB CHUNDER NATH BISWAS *v.* TAMEE BEWAH . . . . 5 W. R., 279

44. ———— *Presidency of Madras.*—The Mahomedan doctrine of pre-emption is not law in the Madras Presidency. IBRAHIM SAIB *v.* MUNI MIR UDIN SAIB . . 6 Mad., 26

Nor in Sylhet. JAMEELAH KHATOON *v.* PARUL RAM . . . . . . 1 W. R., 251

Quære—Whether in Tipperah. DEWAN MUNAR ALI *v.* ASHUROODDEEN MAHOMED . 15 W. R., 270

(*b*) CO-SHARERS.

45. ———— Shafi-i-khalit—*Nature of pre-emptive right arising by common enjoyment of rights appended to property*—In order that two persons may become shafi-i-khalits or persons having a right of pre-emption in virtue of the common [illegible] it is necessary that such [illegible] hfare. [illegible] son of [illegible] are [illegible] hts of [illegible] ntigu- [illegible]

[illegible] 247

46. ———— Right of tenant.—The Mahomedan law nowhere recognizes the right of pre-emption in favour of a mere tenant upon the land. GOOMAN SINGH *v.* TRIPOOL SINGH . 8 W. R., 437

47. ———— Right of shareholder—*Effect of private partition on right of pre-emption.*—According to Mahomedan law, a shareholder in the property sold has the first or strongest right of pre-emption. A private partition, though not sanctioned by official authority, if full and final as among the parties to it, will have the same effect as the most formal partition on the right of pre-emption. GOPAL SAHI *v.* OJOODHIA PERSHAD . . 2 W. R., 47

MAHOMEDAN LAW—PRE-EMPTION —*continued.*

1. RIGHT OF PRE-EMPTION—*continued.*

48. ———————— *Conditional sale —Right of pre-emption among coparceners—Private partition of pattidari estate.*—A and B

having taken place, C and D's brother lent to B two sums of R200 and R190 by deeds of bai-bil-wufa, dated the 12th and 21st June 1876 C and D subsequently instituted foreclosure proceedings, and on the 5th May 1884 were put into possession of B's share in the first-mentioned patti in execution of a decree which they had obtained. On the 18th April 1885, A sued C and D to enforce his right of pre-emption *Held* that, though the coparcenary could not be said to have ceased to exist, or those who were coparceners be said to have become strangers to one another, yet there being a finding that the pattis were separate, it was not necessary, in order to establish A's preferential right, that a partition by metes and bounds should be shown to have taken place, but that a private partition, if full and final between the parties, would have the same effect as the most formal partition on the right of pre-emption, and that A's claim must therefore succeed. DIGAMBUR MISSER *v.* RAM LAL ROY

[I. L. R., 14 Calc., 761

49. ———————— *Right of support, "appendages of property"—Easement—"Participator in appendages of property."*—The right of shaffa (or pre-emption) belongs first to a partner in the property sold, secondly, to a participator in its appendages, and thirdly, to a neighbour. The

disputed house *Held* that A as owner of the servient tenement was a "participator in the appendages" of the house in dispute, and, as such, had a preferential right to purchase the house in dispute over B, who was a mere neighbour. RANCHODDAS *v.* JUGALDAS . I. L. R., 24 Bom., 414

50. ———————— *Right of co-sharer in part of estate sold.*—When part of an

51. ———————— *Shiah law—Case in which more than two partners.*—Under Shiah law, the authorities leave the point doubtful whether there can be any right of pre-emption in respect of property where there are more than two partners, but the Court held in accordance with the practice of the Courts in which no claim for pre-emption had ever been defeated on that ground. DAMI *v.* ASHOOHA BEBEE . . 2 N. W., 360

52. ———————— *Property owned by more than two co-sharers—Shiahs.*—The prevalent doctrine of the Mahomedan law governing the Shiah sect is that no right of pre-emption exists in the case of property owned by more than two co-sharers. *Dami* v. *Asooha Beebee, 2 N. W., 360,* and *Tafazzul Husain* v. *Hadi Hasan, Weekly Notes, 1886, p. 139,* dissented from ABBAS ALI *v.* MAYA RAM . . . I. L. R., 12 All., 229

53. ———————— *Equality of rights.*—Where there is a plurality of persons entitled to the privilege of pre-emption, the right of all is equal without reference to the extent of their shares in the property. MOHARAJ SINGH *v.* LALLA BHEECHUK LALL . . . 3 W. R., 71

54. ———————— *Claim by one share*

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of co-

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55. ———————— *Owner of separated share of estate—Shafee khalit.*—The pro-

56. ———————— *Sharers in appendages, and in body of estate.*—A sharer in the appendages has not an equal right to pre-emption with a sharer in the body of the estate. GOLAM ALI KHAN *v.* AGURJEET ROY 17 W. R., 343

57. ———————— *Undefined share*

[14 W. R., 365

58

or sharik, it may be shown by express words or it may be inferred from the written statement whether the plaintiff claimed on the one or on the other ground. Where the intention of the co-proprietors of an estate is to make a complete batwara of the whole, but an inconsiderable part is by oversight or accident left out of the division, that will not have

MAHOMEDAN LAW—PRE-EMPTION —*continued.*

1. RIGHT OF PRE-EMPTION—*continued.*

the effect of giving one co-proprietor a claim of pre-emption on the sale to a stranger by another co-proprietor of his share or division of the estate. *Semble*—Where an integral portion of property, as a wall, is left purposely joint and undivided, the community of interest continues. LALA PRAG DUTT v. BANDI HOSSEIN . . 7 B. L. R., 42

S. C. LALLA PURIAG DUTT v. BUNDEH HOSSEIN [15 W. R., 225

and on review, BUNDEY HOSSEIN v. LALLA PURIAG DUTT . . . . . . 16 W. R., 110

59. ——— ——— *Co-partners—Partners between whom there has been separation.*—In a suit to recover by right of pre-emption, on the ground that plaintiff was in the position of a co-partner in the property to be sold, notwithstanding a private separation having taken place between the shareholders, inasmuch as he was still liable for arrears of Government revenue, and might still apply for a public batwara,—*Held* that, as plaintiff had divided off his own share by regular metes and bounds, and made himself in every respect indepen-

[illegible]

60. ——— ——— The term "sharik" cannot be restricted to cases in which the parties enjoy the properties jointly. In the contemplation of Mahomedan law those who occupy other houses in the same mansion are regarded as partners together with the person the sale of whose share in a house gives rise to the question of pre-emption. GUREEBOOLLAH KHAN v. KEBUL LALL MITTER [13 W. R., 124

61.——— ——— *Right against co-parcener.*—No right of pre-emption can exist as against a co-parcener MOHESHEE LALL v. CHRISTIAN . . . 6 W. R., 250

62 ——— ——— *Co-parceners*—There is no rule of Mahomedan law giving one co-parcener any right of pre-emption where another co-parcener is the purchaser LALLA NOWBUT LALL v. LALLA JEWAN LALL

[I. L. R., 4 Calc., 831: 2 C. L. R., 319

63. ——— ——— *Joint purchase by co-sharers and stranger—Pre-emptor not compelled to pre-empt share purchased by co-sharers.*—If a co-sharer associates a stranger with him in the purchase of a share, another co-sharer is entitled to pre-empt the whole of the property sold, but it is not obligatory upon him to impeach the sale, so far as the co-sharer vendee is concerned. HARJAS v. KANHYA . . . . I. L. R., 7 All., 118

64. ——— ——— *Joint purchase by co-sharer and stranger, Effect of—Specification of share in a deed of sale, Effect of.*—Under the rule of Mahomedan law, if a sharer in an estate alienates his interest to a co-sharer and stranger, the purchasing sharer, by joining an outsider in the purchase, forfeits his right as a sharer, and another co-sharer has the right of pre-emption. *Lalla Nowbut Lall* v. *Lalla Jewan Lall, I. L. R., 4 Calc., 831,* distinguished. *Held* also that, in the case of a joint-purchase made by two persons of shares in two villages in one of which one of the purchasers was already a sharer, at one entire consideration, the specification in the deed of sale of their respective shares in the aggregate purchase would not affect the rule. *Manna Singh* v. *Ramadhin Singh, I. L. R., 4 All., 252.* SALIGRAM SINGH v. RAGHUBARDYAL I. L. R., 15 Calc., 224

65. ——— ——— *Recorded co-sharers—Benami purchase of shares—Sale by co-sharer—Claim for pre-emption resisted by person claiming to be co-sharer by virtue of benami transaction—Equitable estoppel.*—A secret purchase benami of shares in a village does not constitute the purchaser a co-sharer for the purposes of pre-emption either under the Mahomedan law or under the [illegible] to enable him upon

[illegible]

to BENI SHANKAR SHELHAT v. MAHPAL BAHADUR SINGH . . . . I. L. R., 9 All., 480

66. ——— ——— *Wajib-ul-urz—* [illegible] *share—His own*

[illegible]

and others who were rival claimants for pre-emption in the share sold. The rival pre-emptors alone defended the action on the ground, among others, that the plaintiff was not in possession of her own share in the village out of which she alleged that her right to claim pre-emption arose. The Court of first instance dismissed her suit. On appeal the District Judge in effect dismissed her claim as against the defendants who were the rival pre-emptors, but gave the plaintiff a right to obtain the share if the other pre-emptors did not avail themselves of the decree which they had obtained in their action. On the 12th of January 1887 plaintiff's second appeal was admitted, and on the 20th January plaintiff's share, in the village out of which her claim to pre-emption in respect of the share sold arose, was sold in execution of a decree in another suit. The respondent contended that, as since the appeal the share out of which plaintiff alleged that her right arose was sold, she could not get any decree now in her favour. *Held* that this Court as a Court of Appeal have only got to see what was the decree which the Court of first instance should have passed, and if the

MAHOMEDAN LAW—PRE-EMPTION
—*continued.*

1. RIGHT OF PRE-EMPTION—*continued.*

tain the decree, if she had obtained a decree in her favour in the Court of first instance, either on review or on appeal, nor could it have been made

her right of pre-emption was alleged to have arisen. *Held* by MAHMOOD, J., that the passage from Hamilton's Hedaya by Grady, p. 562, means that in the pre-emptive tenement the pre emptor should have a vested ownership and not a mere expectancy of inheritance or a reversionary or any kind of contingent right, or any interest falling short of full ownership. SAKINA BIBI *v.* AMIRAN
[I. L. R., 10 All., 472

67. ———————— *Shareholder or*

68. ———————— *Sale of share in zamindari—Vicinage*.—A right of pre-emption attaches to the sale of the share of the zamindari in the case of a co-sharer, though it may not attach on the ground of vicinage. AKHOY RAM SHAHAJEE *v.* RAM KANT ROY . 15 W. R., 223

69. ———————— *Co-parcener or*

70. ———————— *Preferential right*

71. ———— Vicinage—*Right of partner to pre-emption on sale of villages or large estates*.—According to the Mahomedan law, a partner has a right of pre-emption in villages or large estates.

MAHOMED HOSSEIN *v.* MOHSUN ALI
[14 W. R., 266

72. ———————— *Adjacent plots of land.—Quære*—Whether, as between owners of adjacent plots of land, pre-emption can exist by right of vicinage. NIRPUT MUHTOON *v.* DEEP KOONWAR
[8 W. R., 2

73. ———————— *Separate mehals.*—Where an estate, originally one, has been divided into two separate mehals, no right of pre-emption under the Mahomedan law will subsist on behalf of one of such mehals in respect of the other merely by reason of vicinage; nor will any right of pre-emption arise from the fact that certain appurtenances to the original mehal are still enjoyed in common by the owners of the separated mehals. ABDUL RAHIM KHAN *v.* KHARAG SINGH . I. L. R., 15 All., 104

74. ———————— *Equal right of pre-emption in two persons.*—Where two persons

[2 N. W., 257

75. ———————— *Ownership.*—

76. ———————— *House on land—Separate ownership.*—The owner of land is not entitled by Mahomedan law to pre-emption of a house standing thereon where his property in the land is wholly separate and distinct from the property in the house which belongs to another person with whom the owner has nothing in common. PERSHADI LAL *v.* IRSHAD ALI . . . . 2 N. W., 100

77. ———————— *Large estates—Small holdings—Mutual convenience.*—A claim to rights of pre-emption on the ground of vicinage alone will not lie in the case of large estates, but only when either houses or small holdings of land make parties such near neighbours as to give a claim on the ground of convenience and mutual service. EJNASH KOOER *v.* AMJUD ALLY . . 2 W. R., 261

78. ———————— *Large estates—*

79. ———————— *Parcels of land*

MAHOMEDAN LAW—PRE-EMPTION —*continued.*

1. RIGHT OF PRE-EMPTION—*continued.*

80. ———— **Large or small estates.**—The right of a shareholder to pre-emption exists whether the parcel of land sold, and in respect of which the claim is made, be large or small. JEHANGIR BAKSH *v.* LALA BHIKARI LALL [6 B. L. R., 42 note

JAHANGEER BUKSH *v.* BHICKAREE LALL [11 W. R., 71

S. C. affirmed on review. IN THE MATTER OF THE PETITION OF JEHANGIR BAKSH [7 B. L. R., 24 : 11 W. R., 480

MAHATAB SINGH *v.* RAMTAHAL MISSER [6 B. L. R., 43 note : 10 W. R., 314

81. ———— **Agricultural estates**—*Partners.*—Pre-emption extends to agricultural estates, and is not merely confined to urban properties or small plots. Where there are several properties to which a common appurtenance in the shape of an undivided plot of land, a few trees and tanks is attached, partners in the appurtenance can claim pre-emption in respect of the properties. KARIM BUKSH *v.* KAMR-UD-DEEN AHMAD . 6 N. W., 377

(*c*) PRE-EMPTION IN TOWNS.

82. ———— **Owners of upper and lower floors of house**—*Pre-emption among Hindus.*—Wherever the custom of pre-emption exists in towns or amongst Hindus, the presumption is, until the contrary be shown, that the custom is based upon the Mahomedan law of pre-emption. Therefore, where a

83. ———— **Dwelling-house**—*Separate ownership of site of house.*—Where a dwelling-house was sold as a house to be inhabited as it stood with the same right of occupation as the vendor had enjoyed, but without the ownership of the site,—*Held* that a right of pre-emption under Mahomedan law attached to such house. ZAHUR *v.* NUR ALI [I. L. R., 2 All., 99

(*d*) MORTGAGES.

85. ———— **Accrual of right**—*Foreclosure of equity of redemption.*—In the case of a mortgage, the right of pre-emption does not arise until the equity of redemption is finally foreclosed. (BAYLEY, J., dissenting.) GURDIAL MUNDAR *v.* TEKNARAYAN SINGH . B. L. R., Sup. Vol., 166 : 2 W. R., 215

86. ———— *Right of suit to enforce right of pre-emption—Foreclosure—Possession by mortgagee.*—On the foreclosure of a mort-

in respect of the property mortgaged is ... TARA KUNWAR *v.* MANGRI MEEAH [6 B. L. R., Ap., 114

87. ———— *Mortgage without actual transfer of possession.*—In a suit for a declaration of plaintiff's right of pre-emption in a

SHUNNO SINGH . . . 11 W. R., ...

(*e*) WAIVER OF RIGHT OR REFUSAL TO PURCHASE.

... conveyance

been duly asserted. BHADU MAHOMED *v.* ... CHURN BOLIA . . 4 B. L. R., A. C., 219

S. C. BHODO MAHOMED *v.* RADHA CHURN BOLIA [13 W. R., 332

89. ———— **Surrender of right of pre-emption before sale.**—Where an offer of sale was made to a pre-emptor, and he refused to avail himself of it, and consented to a sale to a stranger,—*Held* that after a sale to a stranger he could not set up his right of pre-emption BRAJA KISHOR SURMA *v.* KIRTI CHANDRA SURMA [7 B. L. R., 19 : 15 W. R., 247

But *see* IN THE MATTER OF THE PETITION OF JEHANGIR BAKSH . . 7 B. L. R., 24 note

S. C. JAHANGEER BUKSH *v.* LALLA BHIKHAREE LALL . . . . . 11 W. R., 480

where, however, the point was not directly decided, there being no sufficient proof of the refusal to purchase, and no evidence of consent to sell to another.

90. ———— **Refusal to purchase when property offered for sale**—*Subsequent suit to* ...

MAHOMEDAN LAW—PRE-EMPTION—*continued.*

1 RIGHT OF PRE-EMPTION—*continued.*

Sheo Tuhul Singh *v.* Ram Kooer [W. R., 1864, 311

Kooldeep Singh *v.* Ram Deen Singh [24 W. R., 198

91. ——— **Right of refusal on sale to stranger**—*Co-sharers paying rent separately.*—*A* and *B*, Mahomedan co-sharers of a talukh, made [illegible]

[illegible] *Held* that on a sale by *A* of part of his share to a stranger, who was also a Mahomedan, *B* was entitled to pre-emption. Koromali *v.* Amir Ali . . . 3 C. L. R., 166

92. ——— **Right of refusal**—*Conditional right—Co-sharers—Minor.*—Where a condition for pre-emption contained in a record-of-rights was intended to take effect at the time of a sale, and its language implied that the co-sharers in whose favour it was made were to be persons who were competent at that time to make a binding contract to accept or refuse an offer, no right of pre-emption accrued under the condition to a co-sharer who was a minor at the time of a sale and unrepresented by any person competent to conclude a binding contract on his behalf, whether it was assumed that the condition arose out of special contract or general usage. Raja Ram *v.* Bansi . . . I. L. R., 1 All., 207

93. ——— *"Stranger"—"Sale"—Assignment by way of dower—Assignment in lieu of dower—Debt.*—The heirs of a Mahomedan have no legal interest or share in his property so long as he is alive, and cannot therefore be re[illegible] co-sharers or coparceners in his [illegible]

[illegible] ferred certain property to his wife in consideration of a certain sum which was due by him to her as dower *Held* that such transfer was a "sale" within the meaning of the Mahomedan law of pre-emption, and gave rise to the right of pre-emption. [illegible]

94. ——— **Refusal to purchase without absolute relinquishment or surrender.**—The right of pre-emption may be claimed after a [illegible] there has been a refusal to [illegible] been no [illegible] the right, [illegible] in consequence of the [illegible] I. All., 521

MAHOMEDAN LAW—PRE-EMPTION—*continued.*

1 RIGHT OF PRE-EMPTION—*continued.*

95. ——— **Acquiescence in sale**—*Notice* [illegible]

[illegible] no communication to the vendor after he became [illegible]

[illegible] silent, to communicate to the vendor that he was prepared to purchase at the price within a reasonable time, and that *not having done so he must be taken* to have countenanced the completion of the bargain with the vendee, and to have waived his right of pre-emption. Baharison Singh *v.* Lanman [I. L. R., 7 All., 23

[illegible]

[I. L. R., 8 All., 275

[illegible]

98. ——— *Effect of offer* [illegible]

MAHOMEDAN LAW—PRE-EMPTION—*continued.*

1. RIGHT OF PRE-EMPTION—*concluded.*

and waived his right of pre-emption. *Muhammad Nasiruddin* v. *Abul Hasan, I. L. R., 16 All., 300,* followed. *Habibunnissa* v *Abdul Rahim, I. L. R., 8 All., 275,* referred to. MUHAMMAD YUNUS KHAN v. MUHAMMAD YUSUF . I. L. R., 19 All., 334

MUHAMMAD NASIRUDDIN v. ABUL HASAN
[I. L. R., 16 All., 300

2. PRE-EMPTION AS TO PORTION OF PROPERTY.

99. ———— Assertion of right as to portion of property—*Ground for refusing whole.*—In the absence of sufficient ground for refusing to take the whole of the lands to be sold, the right of pre-emption cannot be asserted as to a portion only. CAZEE ALI v. MUSSEEUTOOLLAH . 2 W. R., 285

100. ———— *Circumstances disentitling party to enforce the right.*—The right of pre-emption cannot ordinarily be claimed in respect of only a portion of any property conveyed

101. ———— *Suit to enforce*

Ram Singh, N. W., S D. A., 1863, p. 394, followed. *Oomur Khan* v *Moorad Khan, N. W., S. D. A., 1865, p. 173,* and *Salig Ram* v. *Debi Prasad, 7 N. W., 39,* distinguished. *Cazee Ali* v. *Musseeutoollah, 2 W. R., 285, Abdool Gufoor* v. *Nur Banu, 1 B. L. R., A. C., 78 : 10 W. R., 111; Sheodyal Ram* v *Bhyroo Ram, N. W, S. D. A., 1860, p. 53; Guneshee Lal* v. *Zaraut Ali, 2 N. W., 343,* and *Bhawani Prasad* v. *Damru, I. L. R., 5 All., 197,* referred to. DURGA PRASAD v. MUNSI
[I. L. R., 6 All., 423

102. ———— *Suit by pre-emptor not entitled to claim the whole of the property sold—Frame of suit.*—*Held* that, where a pre-emptor by reason of the claim of other persons entitled equally with himself to claim pre-emption is only entitled to a certain portion of the property in respect of which he claims pre-emption, and not to

MAHOMEDAN LAW—PRE-EMPTION—*continued.*

2. PRE-EMPTION AS TO PORTION OF PROPERTY—*continued.*

the whole of it, he is not bound to frame his suit as a suit for the whole of the property sold, but only

370, and *Hulasi* v. *Sheo Prasad, I. L. R., 6 All., 455,* distinguished. ABDULLAH v. AMANAT-ULLAH
[I. L. R., 21 All., 293

103. ———— *Suit to enforce pre-emption to portion of property sold.*—Under a deed of sale, the vendor conveyed to the purchaser five lots of land. In a suit by a third party to enforce a ... bargain and ... portion only ... sale. IZZATULLA v. BHIKARI MOLLA
[6 B. L. R., 386 : 14 W. R., 469

RAGHUNUNDAN SINGH v. MAJBUTH SINGH
[6 B. L. R., 387 note : 10 W. R., 379

104. ... *of which* ... of severa... was sold ... which contained a covenant by the vendors ... professed to act on behalf of themselves and the minors that they would compensate the vendee for any loss he might incur should the minors, when ... sued to en- ... the lands ... nion that ... rtion in respect of the share of the minors; and on the Court's suggestion the plaint was amended, so as to ask for enforcement of her claim in respect only of the shares of the vendors of full age. *Held* that A was bound to claim her right against all the shares, and could not enforce it in respect of some only. ABDOOL GUFOOR v. NURBANU
[1 B. L. R., A. C., 78 : 10 W. R., 111

105. ———— *Co-sharer*— ... ntiffs, ... sued ... on a sale under a kobala for a particular sum of money by another shareholder of a share in the mouzah, along with other properties with which the plaintiffs had no concern, to a third person who was not a share... ... entitled to ... the mou- ... from the ... ntainable.
[15 C. L. R., 45

106. ———— *Rival suits*—*Suit to enforce the right in respect of a part of the property sold.*—The prior institution of a suit by

MAHOMEDAN LAW—PRE-EMPTION—*continued.*

2. PRE-EMPTION AS TO PORTION OF PROPERTY—*continued.*

rival pre-emptors in no way entitles a pre-emptor to

107. ——————— *Wajib-ul-urz—Rival suits—Decree not to allow either claimant to pre-empt part only of the property over which he has a pre-emptive right.*—Where two rival pre-emptors, each having an equal right to claim pre-emption under a wajib-ul-urz, bring suits to enforce their rights, in the absence of anything in the wajib-ul-urz to the contrary, the rule of Mahomedan law must be observed, and however the property may be divided by the decree of the Court between the successful pre-emptors, the Court must take care that the whole share must be purchased by both pre-emptors, or on the default of one by the other, or that neither of them should obtain any interest in the property in respect of which the suits were brought. In two rival suits for pre-emption the Court gave one claimant a decree in respect of a three-annas share, and the other a decree in respect of a two-annas six pies share of certain property, each decree being conditional on payment of the price within thirty days. The Court further directed that in case of either pre-emptor making default of payment within the thirty days the other should be entitled to pre-empt his share on payment of the price thereof within fifteen days, of such default. Both pre-emptors made default of payment within the thirty days. One of them, within the further period of fifteen days, paid into Court the price of the share decreed in favour of the other and claimed to pre-empt such share. *Held* (affirming the judg-

...RAZ SINGH . . I. L. R., 10 All., 182

108. ——————— *Pre-emptor disentitled by laches from claiming portion of*

included in the sale. Where therefore a pre-emptor was disqualified from claiming a portion of the property sold, by not having made a prompt demand in accordance with the Mahomedan law in respect of such portion,—*Held* that he was thereby prevented from maintaining his suit for another portion claimed under the provisions of the wajib-ul-urz of a village,

MAHOMEDAN LAW—PRE-EMPTION—*continued.*

2. PRE-EMPTION AS TO PORTION OF PROPERTY—*concluded.*

109. ——————— *Wajib-ul-urz—*

claiming as to one portion of the property sold under the Mahomedan law and as to another under the wajib-

law applied, it was *held* that the pre-emptor was not entitled to pre-emption in respect of any portion of the property covered by the said sale-deed. *Muhammad Wilayat Ali Khan* v. *Abdul Rab*, *I. L. R., 11 All., 108*, followed. MUJIB-ULLAH v. UMED BIBI . . I. L. R., 21 All., 119

3. CEREMONIES.

110. ——————— **Necessity of proof of performance of preliminary ceremonies.**—In the case of pre-emption, strict proof is necessary of the performance of the preliminaries. HOSSEINEE KHANUM v. LALLUN . . W. R., 1864, 117

JADU SINGH v. RAJKUMAR [4 B. L. R., A. C., 171

ISSUR CHUNDER SHAHA v. NISAR HOSSEIN [W. R., 1864, 351

PROKAS SINGH v. JOGESWAR SINGH [2 B. L. R., A. C., 12

111. ——————— **The right of**

112. ——————— *Omission to perform ceremonies—Evidence of relinquishment of right—Negligence.*—There are certain ceremonies

a case, just as, on the other, that omission is not of necessity evidence of a relinquishment of the right, yet, in this case, in which defendant had

nothing worse; it was held that the plaintiff was not

MAHOMEDAN LAW—PRE-EMPTION —*continued.*

3. CEREMONIES—*continued.*

entitled to a decree. SURDHAREE LALL *v.* LABOO MOODEE . . . . . 25 W. R., 500

113. ———— Acts or omissions by pre-

observed on behalf of such person by an agent or manager of such person. ABADI BEGAM *v.* INAM BEGAM . . . . . I. L. R., 1 All., 521

115. ———— Performance of ceremonies by agent—*Affirmation by witnesses—Repudiation of sale.*—According to Mahomedan law, the affirmation by witnesses need not be made by the claimant of the right of pre-emption in person, but may be made by a duly constituted agent. OJHEOONISSA BEGUM *v.* RUSTUM ALI . . . W. R., 1864, 210

116. ———— Talab-i-mawasabat—*Intention to assert right—Talab-i-ishtahad—Demand in presence of witnesses.*—To entitle a person, otherwise favourably situated, to the right of pre-emption, two conditions must be fulfilled: first (talab-i-mawasabat), on receiving information of the sale he must immediately declare his intention to assert his right; and, secondly (talab-i-ishtahad), he must, as soon after as possible, make the demand of the vendor or purchaser, or upon the premises, and in the presence of witnesses. JHOTEE SINGH *v.* KOMUL ROY [10 W. R., 118

117. ———— In order to sustain a claim for pre-emption in Mahomedan law, it is essential that the ceremony of talab-i-mawasabat should be properly performed. JAFFAN KHAN *v.* JABBAR MEAH . I. L. R., 10 Calc., 383

[I. L. R., 1 All., 283

119. ———— *Delay in making claim.*—On hearing of a sale, the pre-emptor must immediately make his demand called talab-i-mawasabat. Where a pre-emptor, on hearing of the sale of a property to which he had a right of pre-emption, went to the property in dispute and there declared his right as pre-emptor,—*Held* that such delay was fatal to his claim. RAM CHARUN *v.* NARBIR MAHTON [4 B. L. R., A. C., 216: 13 W. R., 259

120. ———— *Omission to give notice of claim until after lapse of long time—Long deferred demand.*—A sale of property, to which the Mahomedan law of pre-emption was applicable, took place in October 1884. The plaintiff pre-emptor and his agent became aware of the sale

121. ———— *Want of proof of required ceremonies—Wajib-ul-urz—Custom—*

plaintiff had satisfied the requirements of the Mahomedan law as to immediate and confirmatory

must be applied to the case, and that, under the

KARIM . . . . . I. L. R., 9 All., 513

122. ———— *Time taken to*

first demand. AMJAD HOSSEIN *v.* KHARAG SEN SAHU . 4 B. L. R., A. C., 203: 13 W. R., 299

123. ———— *Making claim standing or sitting.*—The act of a claimant rising from his seat to claim his right of pre-emption, instead of claiming it as he sat, is not a delay sufficient to entail a forfeiture of his right. MAHARAJ SINGH *v.* LALLAH BHUGHOOK LALL . W. R., 1864, 294

124. ———— *Witnesses, Necessity of.*—Although, according to Mahomedan law books, it is not necessary, in respect to the talab-i-mawasabat, or first preliminary required to establish

MAHOMEDAN LAW—PRE-EMPTION —*continued*

3. CEREMONIES—*continued.*

a right of pre-emption, that witnesses should bear the exclamation it involves, yet it does not follow that, as matter of evidence, Courts of law are bound to decree a suit to establish such a right simply on the deposition of the plaintiff. ABDOOL HOSSEIN KHAN *v.* GOBIND CHANDRA SHAHA 11 W. R., 404

125. ———— Talab-i-ishtahad—*Necessity of proof of performance.*—To establish a claim to pre-emption under the Mahomedan law, it is not enough to prove that the ceremony of talab-i-mawasabat was performed; it is also necessary to prove the talab-i-ishtahad. NARBHAEE SINGH *v.* LUCHMEE NARAIN POOREE . . . . . 11 W. R., 307

126. ———— *Necessity of finding as to performance.*—The "talab-i-ishtahad" is a preliminary act as essential as the "talab-i-mawasabat" to secure to the claimant the right of enforcing pre-emption. There should always therefore be a distinct finding as to whether it was properly made or not. RAZEEOODDEEN *v.* ZEENUT BIBEE [8 W. R., 463

127. ———— *Necessity of proof of performance.*—Under the Mahomedan law it is essential to the right of pre-emption to prove the performance of the talab-i-ishtahad. BHOWANEE DUTT *v.* LOKHOO SINGH . W. R., 1864, 60

128. ———— *Mode or form of ceremony—Performance—Hindus.*—To the due peformance of the ceremony of talab-i-ishtahad, it is not necessary that any particular form of words should be employed. RAMDULAR MISSER *v.* JHUMACK LAL MISSER [8 B. L. R., 455: 17 W. R., 265

129. ———— *Mode or form of ceremony—Talab-i-mawasabat.*—To establish a right of pre-emption, it is necessary to show that the ceremony of talab-i-ishtahad has been observed, which

viz., talab-i-mawasabat—has already been performed. GIRDHAREE SINGH *v.* ROJUN SINGH [24 W. R., 462

130. ———— *Requisites for*

131. ———— *Requisites for ceremony—Declaration and invocation of witnesses*

MAHOMEDAN LAW—PRE-EMPTION —*continued.*

3. CEREMONIES—*continued.*

bear witness therefore to the fact." JADU SINGH *v* RAJKUMAR [4 B. L. R., A. C., 171: 13 W. R., 177
DAYAMOOLLAH *v.* KIRTEE CHUNDER SURMAH [13 W. R., 530

132. ———— *Requisites for ceremony—Invocation of witnesses to demand.*—

v. BRINDABAN DEB [6 B. L. R., 165 : 14 W. R., 265

133.

MED ARJAD [I. L. R., 5 Calc., 509 : 5 C. L. R., 370

134. ———— *Performance in presence of person in possession, vendor or purchaser.*—To establish the right of pre-emption, the talab-i-ishtahad, or affirmation before witnesses, must be performed in the presence of the person in possession of the lands, whether it be the vendor or the purchaser. CHAMROO PASBAN *v.* PUHLWAN ROY [16 W. R., 3

135. ———— *Omission to*

136. ————

137. ———— *Invocation of witnesses where talab-i-mawasabat is made in presence of witnesses—Performance of talab i-mawasabat and ishtahad—Witnesses.*—Where the first talab (talab-i mawasabat) is made in the presence of witnesses, and the witnesses are then called to bear testimony to the fact, it is not necessary to invoke witnesses on

MAHOMEDAN LAW—PRE-EMPTION —*continued.*

3. CEREMONIES—*continued.*

the occasion of the second talab (talab-i-ishtabad). *Wa-*

138. ——— *Invocation of witnesses—Claim where there are several co-sharers—Tender of price for the land claimed—One out of several co-sharers claiming a right to pre-emption.*—A person seeking pre-emption declared his right thereto when he first heard of the sale, in the presence of witnesses, and as soon as was possible on the same

right as soon as he heard of the sale. The principle of the law of pre-emption is, that the pre-emptor

when he makes the demand, is required to make a declaration before witnesses that he asserted his right when first he heard of the sale. NUNDO PERSHAD THAKUR *v.* GOPAL THAKUR [I. L. R., 10 Calc., 1008

139. ——— *Ceremonies of "immediate demand" and "demand with invoca-*

140. ——— *Talab-i-mawa-*

AKBAR HUSAIN *v.* ABDUL JALIL [I. L. R., 16 All., 383

141. ——— *Demand made "on the premises"—Demand made within an undivided village a share in which was the subject of sale.*—Where certain persons claimed pre-emption in respect of a share in an undivided village and proved that they made an immediate assertion of their intention to pre-empt in the presence of witnesses within the area of the zamindari to which the share sold belonged, it was *held* that, in the absence of any indication that the demand was not made *bonâ fide*, the demand of pre-emption was a good demand made "on the premises" within the meaning of the Mahomedan law. KULSUM BIBI *v.* FAQIR MUHAMMAD KHAN I. L. R., 18 All., 298

142. ——— *Demand made to vendee not in possession—Demand made by agent of pre-emptor.*—*Held* that, if the talab-i-ishtahad is made in the presence of the vendee, it is not necessary that such vendee should, at the time the

explained. *Jhotee Singh* v. *Komul Roy*, ... 119; *Janger Mahomed* v *Mohamed Arjad, I. L. R., 5 Calc., 509, Gola Ram Deb* v. *Brindabun Deb, 6 B. L. R., 165 : 14 W. R., 265*, and *Dayemoollah* v. *Kirtee Chunder Surmah, 18 W. R., 530*, referred to. *Held* also that the ceremony of talab-i-ishtahad need not necessarily be performed by the claimant for pre-emption in person, but may be performed by a duly constituted agent on his behalf. *Wajid Ali Khan* v. *Lalla Hanuman Prasad, 4 B. L. R., A. C., 139*, and *Ojheoonissa Begum* v. *Rustum Ali, W. R. (1864), 219*, referred to. ALI MUHAMMAD KHAN *v.* MUHAMMAD SAID HUSAIN [I. L. R., 18 All., 309

143. ——— *Witnesses—Servants of pre-emptor.*—In the making of the talab-i-ishtahad the servants of the pre-emptor are competent witnesses. The disability in this respect imposed by the Mahomedan law is limited to minors and persons convicted of slander. MUHAMMAD YUNUS KHAN *v.* MUHAMMAD YUSUF I. L. R., 19 All., 334

144 ——— *Reference to talab-i-mawasabat necessary*—A pre-emptor claiming pre-emption under the Mahomedan law is bound, at

BEGAM *v.* AFZAL HUSEN I. L. R., 20 All., 457

145. ——— *Reference necessary to the previous talab i-mawasabat.*—When in asserting a claim for pre emption the making of the talab-i-ishtahad is required, it is absolutely necessary that the time of making this demand reference should be made to the fact of the talab i mawasabat having been previously made, and this necessity is not removed by the fact that the witnesses to both demands are the same. *Rujjub Ali Chopedar* v. *Chundi Churn Bhadra, I. L. R., 17 Calc., 543; Alfar Husain* v. *Abdul Jalil, I. L. R., 16 All., 383*; and *Abasi Begam* v. *Afzal Husen, I. L. R., 20 All., 457*, followed. *Nundo Pershad Thakur* v. *Gopal Thakur, I. L. R., 10 Calc., 1008*, dissented from. ABID HUSEN *v.* BABBIR AHMED [I. L. R., 20 All., 499

MAHOMEDAN LAW—PRE-EMPTION —*continued.*

3. CEREMONIES—*concluded.*

146. ——— *Necessity of immediate demand.*—To entitle a person to a right of pre-emption under Mahomedan law, it must be shown that the talab-i-ishtahad was made as soon as possible. NURADDIN MAHOMED *v.* ASGAR ALI [12 C. L. R., 312

147. ——— *Necessity of immediate demand.*—It is not a binding rule of law that the talab-i-ishtahad by a pre-emptor, if made within a day after the receipt of intelligence of the purchase, is necessarily in time for the preservation of the right of pre-emption. The due and sufficient observance of the formality of talab-i-ishtahad as to time is a question to be decided in each case by the Court which has to deal with the facts. JAMILAN *v.* LATIF HOSSEIN [8 B. L. R., 160 : 16 W. R., F. B., 13

148. ——— *Mode of performance.* The personal performance of the talab-i-ishtahad, or demand for pre-emption by the pre-

[4 B. L. R., A. C., 158 : 12 W. R., 484

IMAMUDDIN *v.* SHAH JAN BIBI [6 B. L. R., 167 note

149. ——— *Delay in making demand—*

[6 W. R., 173

150. ——— *Delay in making demand.*—A claim to pre-emption should be made as soon as the claimant becomes aware of the completion of the sale. AJOODHYA POOREE *v.* SOHUN LALL [7 W. R., 428

ELAHEE BUKSH *v.* MOHAN . . 25 W. R., 9

151. ——— Performance of prelimi-

become a purchaser. GHOLAM HOSSEIN *v.* ABDOOL KADIR . . . . . 5 N. W., 11

152.

MAHOMEDAN LAW—PRE-EMPTION —*continued.*

4. MISCELLANEOUS CASES.

153. ——— Enforcement of right—*Delivery or registration of bill of sale.*—A contract having been entered into for sale and purchase of certain property, the plaintiff, pre-emptor, was not bound to defer the enforcement of his right of purchase till the bill of sale had been delivered or registered, or payment made. LUCHMEE NARAIN *v.* BHEEMUL DOSS . . . . 8 W. R., 500

See GIRDHAREE LALL *v.* DEANUT ALI [21 W. R., 311

154. ——— Offer to purchase at time of registration—*Sufficiency of claim.*—*Held* that

[1 Agra, 184

155. ——— Tender of price—*Necessity of tender.*—It is not incumbent on a pre-emptor to tender the price at the time of making his claim. KHOFFEH JAN BEBEE *v.* MOHOMED MEHDEE [10 W. R., 211

HEERA LALL *v.* MOORUT LALL . 11 W. R., 275

156. ——— *Statement of readiness and willingness to pay.*—In a suit for pre-emption it is unnecessary to prove a tender of the actual price paid for the property claimed, it being sufficient if the person claiming the right to pre-emption states that he is ready to pay for the land such sum as the Court may assess as the proper price for the property. NUNDO PERSHAD THAKUR *v.* GOPAL THAKUR . . I. L. R., 10 Calc., 1008

157. ——— *Lien of vendor.*

of pre-emption may be decreed in respect of land within the patti of the party claiming such right. BULBOOD SINGH *v.* MAHADEO DUTT . 2 W. R., 10

158. ——— *Conclusion of contract of sale.*—As soon as a contract is ratified

[22 W. R., 4

MAHOMEDAN LAW—PRE-EMPTION —*concluded.*

4. MISCELLANEOUS CASES—*concluded.*

159. ———— Loss of right—*Claim dis-*

avoided the sale and divested the original owners

160. ———— Rights of purchaser on allowance of claim—*Profits between time of purchase and transfer to pre-emptor.*—*Held* that a purchaser is entitled to the profits of the property purchased by him accruing between the time of purchase and subsequent transfer to a pre-emptor. BULDEO PERSHAD *v.* MOHUN . 1 Agra, Rev., 30

161. ———— Decree for pre-emption—*Profits of property accruing between sale and decree becoming final—Pre-emption for Hindus—Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887), s. 37—Pre-emption on basis of contract or custom.*—In a suit for pre-emption based on the wajib-ul-urz of a village, the plaintiff pre-emptor did not ask for a declaration that he was

avoided the sale and divested the original owners

of the property. *Held* that the profits of the property which accrued between the date of the sale and

accruing up to the date when the pre-emptor acquired possession of the property in accordance with the

MAHOMEDAN LAW—PRESUMPTION OF DEATH.

1. ———— Missing person—*Evidence Act, I of 1872, s. 108—Act VI of 1871, s. 24.*—The rule contained in s. 108 of the Evidence Act governs the case of a Mahomedan who has been missing for more than seven years, when the question of his death

is to be regarded as alive till the lapse of ninety

2. ———— *Right of inheritance.*—*Held* that, as under the Mahomedan law a missing person is considered "defunct" as regards others' property, and cannot inherit from others during the period allowed for his reappearance, the plaintiff, his son, and nearest relative of the widow,

3. ———— *Position of, as to inheritance during absence—Person in unlawful possession—Legal heir.*—*Held* that, assuming the Mahomedan law to provide that the share of a missing person, which has devolved on him during his absence, is to be reserved or held in suspense until the expiration of the term after which he is to be regarded as dead, a claimant who had no title whatso-

4. ———— *Alienation by heirs of—Right of alienee.*—In a suit to recover possession of a share of landed property, where plaintiff

MAHOMEDAN LAW—PRESUMPTION OF DEATH—*concluded.*

5. ———— *Alienation of property by his heirs—Claim of other heirs.*—A claim by the wife and daughters of a missing person to obtain possession of the shares to which the missing person would have been entitled in the estate of two brothers and a sister on surviving them, was rightly dismissed, under Mahomedan law, on the ground that the death of the missing person was not proved, and [illegible]

6. ———— *Act I of 1872, s. 108—Act VI of 1871, s. 24.*—*F*, one of the heirs to the property of his parents (the family being Mahomedans) was "missing" when they died, and subsequently, when the other heirs to such property sued his daughter *M* for the possession of a portion of such property, *M* set up as a defence to the suit that her father was alive, and that during his lifetime the [illegible] "missing" person. *Parmeshar Rai* v. *Bisheshar* [illegible] *Held by* [illegible] law, [illegible] h, his [illegible] s, but must remain in abeyance until the expiry of that [illegible]

MAHOMEDAN LAW—SALE.

See MAHOMEDAN LAW—MORTGAGE.
[I. L. R., 20 Bom., 116

MAHOMEDAN LAW—SLAVERY.

See SLAVERY . I. L. R., 3 Bom., 422
[12 Bom., 156

MAHOMEDAN LAW—SOVEREIGNTY.

———— Sovereign's rights as to pro- [illegible] whether all his possessions are [illegible] the ordinary rules of inheritance and partition among descendants. A reigning Mahomedan prince may possess property held *jure coronæ*, as well as

MAHOMEDAN LAW—SOVEREIGNTY—*concluded.*

property acquired by some other title. GHULAM MUHAMMAD NAIAMUT KHAN v. DALE
[1 Mad., 281

MAHOMEDAN LAW—USURPED PROPERTY.

———— Conversion of usurped property—*Right of suit for damages by party injured.*—Under Mahomedan law, where there has been a change in usurped property, the injured party has a claim to recover damages in respect of the property usurped, but cannot claim to share in the property into which it has been converted. *An heir cannot* therefore claim estates purchased with moneys belonging to the ancestral estate of the deceased which have been misappropriated by a co-heir, but must claim to recover his share in money. NOOROOL HOSSEIN v. MOONEERAM . . 4 N. W., 103

MAHOMEDAN LAW—USURY.

1 ———— Interest—*Act XXVIII of 1855.*—The custom of taking interest as between Mahomedans is recognized by the Courts. *Semble—Per* PHEAR, *J.* (dissenting from *Ram Lall* [illegible]

2 ———— *Interest on dower.*—With respect to the awarding of interest on a claim of dower by a Moslem widow, the principle of Mahomedan law will not apply. SOORMA KHATOON *v.* ATTAFFOONNISSA KHATOON . 2 Hay, 210

MAHOMEDAN LAW—WIFE.

1. ———— Power of alienation—*Power of wife as one of several tenants in-common to grant lease.*—The District Judge's decision that a Mahomedan married woman cannot execute a valid [illegible]

2 ———— Husband and wife—*Presumption of ownership of property.*—Where rights of [illegible]

MAHOMEDAN LAW—WILL.

See MAHOMEDAN LAW—GIFT—VALIDITY.
[W. R., 1864, 221
1 W. R., 17, 152
8 W. R., 84
7 N. W., 313
I. L. R., 9 All., 357

See PARTIES—PARTIES TO SUIT—EXECUTORS . . I. L. R., 19 Bom., 83

See RECEIVER . I. L. R., 19 Bom., 83

1. ——— Gift operating as will—*Gift in contemplation of death—Legacy*—According to the Mahomedan law a gift made in cont...

... absence of heirs, a will carries the whole property. EKIN BIBEE *v.* ASHRUF ALI
[1 W. R., 152

2. ——— Invalid will—*Will disinheriting heirs*—A wasi-ut-namah, or will, directing all the property from the next heirs, is illegal under Mahomedan law. JUMUNOODDEEN AHMED *v.* HOSSEIN ALI . . . . 2 W. R., Mis., 49

3. ——— *Will made without consent of heirs.*—A will which has never received the assent of the heirs of the testator is inoperative to alter their rights to succeed according to the Mahomedan law of inheritance. KADIR ALI KHAN *v.* NOWSHA BEGUM . . 2 Agra, 154

4. ——— *Will devising more than half estate to daughter.*—Under the Mahomedan law, a person cannot devise more than one-half of his estate to his daughter, and a will devising more to her is invalid. MAHOMED MUDUN *v.* KHODEZUNNISSA *alias* KHOOKEE BEBEE
[2 W. R., 181

5. ——— *Bequest by married woman—Consent of husband.*—*Held* that the bequest by a married woman of the whole of her estate to her brother, without the assent of her husband, was invalid according to the Mahomedan law. MUHAMMAD *v.* IMAMUDDIN
[2 Bom., 53; 2nd Ed., 50

6. ——— *Legacy to one of several heirs—Want of consent of others.*—A legacy cannot be left to one of a number of heirs without the consent of the rest. ABEDOONISSA KHATOON *v.* AMEEROONISSA KHATOON
[9 W. R., 257

7. ——— *Power of testator to interfere with devolution of property.*—By the ...

... uses, and conferring on such son a beneficial interest in the surplus of such third share,—*Held* to be an attempt to give, under colour of a religious bequest,

MAHOMEDAN LAW—WILL—*continued.*

a legacy to one of the testator's heirs, and to be invalid without the confirmation of the other heirs. KHAJOOROONNISSA *v.* ROUSHAN JEHAN
[I. L. R., 2 Calc., 184: 26 W. R., 36
L. R., 3 I. A., 291

8. ——— *Will made without consent of heirs.*—Plaintiffs claimed as purchasers from the daughters (as heirs) of a Mahomedan. ...

... will having been put in issue, the lower Appellate Court should have found whether the heirs were consenting parties; for the bequest by a Mahomedan of more than one-third of his estate without the consent of his heirs is invalid. BABOOJAN *v.* MAHOMED NUROOL HUQ . . . 10 W. R., 375

9. ——— *Suit for share of property against persons in possession under will—Onus probandi.*—In a suit for an undivided share of property claimed by the plaintiffs as heirs of the ...

... of his property, and therefore the onus was on the defendant to furnish a complete statement of the testator's property at the time of his death; failing which the plaintiff's claim must prevail. SUKOONUT BIBEE *v.* WARRIS ALI . . 22 W. R., 400

10. ——— *Consent of heirs—Consent before testator's death.*—By Mahomedan law the consent given by heirs to a testator's will before his death is no assent at all; to be valid, it must be given after the testator's death. AUSERUT ALI *v.* ZEINUNNISSA . . 15 W. R., 146

11. ——— *Assent given* ... it was not ... assent given ... rights. ... UMAR *v.* ... Mad., 350

12. ——— *Consent of heiress to will—Evidence of consent.*—To establish the consent of a Mahomedan heiress to a will, evidence of some act done at the time of its execution, or some act done subsequently, amounting to a ratification ...

FAQUEEROONISSA BEGUM *v.* SUNDAR ALI
[1 Ind. Jur., O. S., 119

MAHOMEDAN LAW—WILL—*continued.*

13. ———— *Consent of heir —Evidence of consent.*—According to Mahomedan law, a will is valid as against an heir if he affixed his signature to it as a consenting party thereto without undue influence. KHADEJAH BIBEE *v.* SUTTUR ALI . . . 4 W. R., 36

14. ———— *Construction of a letter containing a bequest—Suicide of testator.* —A letter, written shortly before the testator's death, contained directions as to his property, conferring the proprietary right therein in equal shares on certain persons, to take effect on his death. Accordingly, the letter acted as a will under Mahomedan law. The testator died, within a few hours after, from poison administered by himself with the intention of suicide. The letter stated that he had taken poison, but this was construed as a representation of the state of things as they would present themselves at the time when the letter arrived. Title under the will having been disputed in this suit, on the ground that the will having been made by a person who had taken poison for the above purpose, was invalid by Mahomedan law. *Held* that the burden of proving that the will was written after the taking the poison was on the party impugning the will; that the letter was consistent with its having been written before the taking the poison; that the other evidence tended strongly to show that it was written before; and that therefore the reason alleged against the validity of the will was not applicable to the case. MAZHAR HUSEN *v.* BODHA BIBI [I. L. R., 21 All., 91 L. R., 25 I. A., 219

15. ———— Form of will—*Nuncupative will—Evidence of will.*—The rule that by Mahomedan law a will does not require to be in writing is universal. The omission to write the wish, where there was ample time for that purpose, may throw doubt on the fact of the words being used as the expression of the testator's last will. But if the Court finds that the testator expressed his will, and that this was his last will, the omission to render it into writing will not deprive it of legal effect. TAMEEZ BEGUM *v.* FURHUT HOSSEIN [2 N. W., 55

16. ———— *Nuncupative will —Law of Shiah sect.*—A nuncupative will by a

17. ———— *Proof of inten-*

MAHOMEDAN LAW—WILL—*continued.*

18. ———— *Assignment to take effect on death—Sale.*—An assignment of his property made by a Mahomedan in favour of his

19. ———— Construction of will

(from generation to generation). *Held* that the

20. ———— *Disposition of*

children, and devoted a share to charitable purposes. It directed that his son "should continue in possession and occupancy of the full sixteen annas of all the

21. ———— *Bequest to per-*

MAHOMEDAN LAW—WILL—*continued.*

only for a few months The testator's brother *A* was appointed executor of the will. In 1878 *V* and *E* sued the executor *A* and his son *S* for an account and division of the property, and by a consent-decree passed in 1881 three-fifths of the property were given to *V* and *E*, and the remaining two-fifths to *A* and *S*. The estate was duly divided in accordance with the decree, and the parties got possession of their respective shares. In February 1884 another son was

recover, not having been in existence at the date of the testator's death. According to Mahomedan law as well as Hindu law, persons not in existence at the death of a testator are incapable of taking any bequest under his will. ABDUL CADUR HAJI MAHOMED *v.* TURNER (OFFICIAL ASSIGNEE) [I. L. R., 9 Bom., 158

22. ——— *Charitable bequest—Stat. 43 Eliz, c. 4—"Dharm," Meaning of.*—In the will of a Khoja Mahomedan, written in

the word "dharm" or "daram" is used, the word is held too vague and uncertain for the gift to be carried into effect by the Court, the Court dharm or daram including many objects not comprehended in the word "charity" as understood in English law. GANGBHAI *v.* THAVAR MULLA . 1 Bom., 71

23. ——— *Invalid gift for want of assent of heirs.*—A Mahomedan by his will bequeathed the rents of a certain house in trust for

24. ——— *Prohibition of*

to a schedule annexed to his will, among certain specific persons divided into two classes, *viz.*, those who took and those who did not take by inheritance. *Held* that the intention of the testator was to

adverse possession against them so as to bar their claims by lapse of time. KHAJOORUNISSA *v.* ROSHUNNISSA . . . . . 17 W. R., 190

25. ——— *Administration of the estate of a Shiah Mahomedan under his will—Alleged gift—Claims as between his childless widow and the estate—Right of childless widow to maintenance—Legacies chargeable on one-third only of the estate—Commission to executor.*—A

formal words of gift by the testator

entitled to maintenance out of the estate of her husband, in addition to what she is entitled to by inheritance or under his will. *Hedaya, Book IV, Ch. 15, s. 3, Mahomedan law, Imamia, by N. E. Baillie, p. 170,* referred to. No contract could be implied that this widow should pay an occupation rent on account of her having continued to occupy a house belonging to the testator's estate, for eleven months after his death. Her occupation was referable to her position, and no notice was given to her

admitted, a share in the proceeds of said buildings. The text quoted in Book VII, C. IV, p. 293, of Baillie's Mahomedan Law, Imamia, is not to be construed as referring only to agricultural land. AGA MAHOMED JAFFER BINDANIM *v.* KOOLSOM BIBEE. KOOLSOM BIBEE *v.* AGA MAHOMED JAFFER BINDANIM . . I. L. R., 25 Calc., 9 [L. R., 24 I. A., 196 1 C. W. N., 449

26. ——— *Construction of the will of a talukhdar—Quantity of estate devised*

be in the name of his eldest daughter's ... and so continue. Besides this grandson, another, the son of his second daughter, as well as two other daughters of the testator, were to be equal sharers entitled to the profits of the estate. Of this estate the will said, "The profits may be divided equally among all the four persons." The talukh had been included in the first and third of the lists prepared in conformity with the Oude Estates' Act, 1869. On a question whether under the will the son of the second daughter took a heritable interest, or only a life-estate, to which

MAHOMEDAN LAW—WILL—*concluded.*

it was argued, the gift was confined by reason of its being only of the profits. *Held* that, in order to show that an unlimited gift of the profits was less than a gift of the corpus, some evidence should be [illegible]

interest to the present appellant, his father. FAIZ MUHAMMAD KHAN *v.* MUHAMMAD SAID KHAN
[I. L. R., 25 Calc., 816
L. R., 25 I. A., 77
2 C. W. N., 385

27. ———— Executor—*Right to nominate successor.*—Under Mahomedan law, an executor is entitled to nominate a successor to carry out the purposes of the will under which he was made an executor. HAFEEZ-OOR RAHMAN *v.* KHADIM HOSSEIN . . . . . . 4 N. W., 106

28. ———— *Khoja Mahomedan administrator with the will annexed—Executor, Powers of.*—The powers of a Khoja Mahomedan executor or administrator, like those of a Cutchi Mahomedan executor or administrator, seem to be generally limited to recovering debts and securing debtors paying such debts. Where a will gave the executor full powers with regard to the payment of the testator's debts,—*Held* that an administrator with the will annexed, who was a Khoja Mahomedan, succeeded to those powers and, in a suit brought against him as such administrator by an alleged creditor of the testator's estate, represented all the persons interested in the estate. AHMEDBHOY HUBIBHOY *v.* VULLEEBHOY CASSUMBHOY
[I. L. R., 6 Bom., 703

29. ———— *Infidel executor.*—The appointment by the will of a Mahomedan of an infidel executor does not invalidate the will. All the acts of such an executor and his dealings with the property under the will, until he is removed and [illegible]

[illegible] KHAN *v.* MANS[illegible]
[1 B. L. R., S. N., 16: 10 W. R., 185

MAINPRIZE.

———— Power of High Court to issue writ of.—A writ of mainprize could only be issued [illegible]

[illegible]

MAINPRIZE—*concluded.*

Chancery to issue such writ was not conferred on the Supreme Court, nor is there anything in the Charter of the High Court to give that Court power to issue it. IN THE MATTER OF AMEER KHAN
[6 B. L. R., 456

MAINTENANCE.

See CASES UNDER CHAMPERTY.

See CASES UNDER DECREE—FORM OF DECREE—MAINTENANCE.

See CASES UNDER EXECUTION OF DECREE—MODE OF EXECUTION—MAINTENANCE.

See HINDU LAW—INHERITANCE—ILLEGITIMATE CHILDREN.
[I. L. R., 1 Bom., 97
4 W. R., P. C., 132: 7 *Moore's I. A.*, 18
I. L. R., 23 Bom., 257
I. L. R., 22 All., 191

See CASES UNDER HINDU LAW—MAINTENANCE.

See CASES UNDER LIMITATION ACT, 1877 ART. 128.

See CASES UNDER MAHOMEDAN LAW—MAINTENANCE.

See MALABAR LAW—MAINTENANCE

See PARTIES—PARTIES TO SUITS—MAINTENANCE, SUITS FOR.

See CASES UNDER SMALL CAUSE COURT MOFUSSIL—JURISDICTION—MAINTENANCE.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—MAINTENANCE.

———— future, Attachment of—

See CASES UNDER ATTACHMENT—SUBJECTS OF ATTACHMENT—MAINTENANCE

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.
[7 W. R., Cr., 10
2 Ind. Jur., N. S., 88

See MAGISTRATE, JURISDICTION OF—RETRIAL OF CASES . . 1 C. L. R., 89

See RES JUDICATA—ADJUDICATIONS
[I. L. R., 5 All., 224

See REVISION — CRIMINAL CASES — MISCELLANEOUS CASES . 5 Bom., Cr., 81

See WITNESS — CRIMINAL CASES — PERSONS COMPETENT OR NOT TO BE WITNESSES . . I. L. R., 18 All., 107
[I. L. R., 16 Calc., 781

1. ———— Jurisdiction—*Criminal Procedure Code (Act X of 1882), s. 488—"The District Magistrate," Meaning of the expression—*

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*continued.*

Complaint by a wife against her husband for maintenance.—A complaint under s. 488 of the Criminal Procedure Code (Act X of 1882) falls within the cognizance of the Magistrate competent to entertain such complaint, and within the local limits of whose jurisdiction the husband or the father is actually residing at the date of such complaint. The expression "The District Magistrate, a Presidency Magis-

whom such a complaint is made. IN RE THE PETITION OF FAKRUDIN . . I. L. R., 9 Bom., 40

2. ——— *Criminal Procedure Code (1882), ss. 488 and 177—Complaint by a wife against her husband for maintenance—Issue of summons—Jurisdiction of Presidency*

which the husband resides. BENBOW v. BENBOW [I. L. R., 24 Calc., 638

IN THE MATTER OF THE PETITION OF BENBOW [1 C. W. N., 577

3. ——— *Criminal Procedure Code, s 488—Maintenance order passed on report of Subordinate Magistrate.*—Under s. 488 of the Code of Criminal Procedure a Magistrate of the

order such person to make a monthly allowance for the maintenance of his wife: a first class Magistrate, having referred a complaint by a wife for maintenance to a Subordinate Magistrate to take evidence and report upon the facts stated in the petition of complainant, passed an order upon such report in the absence of the husband for payment of maintenance. *Held* that the order was illegal VENKATA v. PARAMMA . . . I. L. R., 11 Mad., 199

4. ——— *Criminal Procedure Code, s. 488—Liability of a Hindu not divided from his father to maintain his wife.*—A Hindu not divided from his father can be ordered to maintain his wife under s. 488 of the Code of Criminal Procedure. QUEEN-EMPRESS v. RAMASAMI [I. L. R., 13 Mad., 17

5. ——— *Criminal Procedure Code (1882), s. 488—Illegitimate children—Right of a married woman to claim maintenance for her illegitimate children.*—A married woman is entitled, under s. 488 of the Code of Criminal Procedure (Act X of 1882), to claim maintenance for her illegitimate children from the putative father. ROZARIO v. INGLES . . I. L. R., 18 Bom., 468

6. ——— *Criminal Procedure Code (1882), s. 488—Maintenance and custody of children—Moplahs—Personal law.*—The right of children to be maintained by their actual father is a statutory right, and the duty is created by express enactment independent of the personal law of the parties. If the children are illegitimate, the refusal of the mother to surrender them to the father is no ground for refusing maintenance. If the children

Mahomedan law, the mother may have the right to custody until the children attain the age of seven years; (2) if by the Marumakkatayam law, it is doubtful if the father could be held to have neglected his duty to maintain his children if they were actually maintained by the karnavan of their mother's tarwad who is bound by law to maintain them. KARIYADAN POKKAR v. KAYAT BEERAN KUTTI [I. L. R., 19 Mad., 461

7. ——— *Criminal Procedure Code (Act V of 1898), s. 488—Usage in Malabar—Order for maintenance of child of Sambandam marriage—Marumakkatayam law as observed by Nayar community.*—The father of a child born during the continuance of the form of marriage known as sambandam ... as observed

KRISHNA PATTER v. CHIMMUKUTTI [I. L. R., 22 Mad., 216

AYYA PATTER v. KALIANI AMMAL [I. L. R., 22 Mad., 247

8. ——— *Criminal Procedure Code, s. 488—Failure to pay process-fees.*—An application for maintenance under Criminal Procedure Code, s. 488, should not be dismissed on the failure on the part of the applicant to comply with an order for payment of process-fees. IN RE PONNAMMAL [I. L. R., 16 Mad., 234

9. ——— *Criminal Procedure Code, 1872, s. 536—Former application refused at another place.*—A Magistrate of the first class has, as such, power to pass an order under the provisions of s. 536 of the Code of Criminal Procedure, notwithstanding he may not be empowered to take cognizance of offences without complaint. The petitioner, a resident of Cawnpore, was summoned to Allahabad to answer ... maintenance of his children ... allowance ... been made at Cawnpore, which was ... ground of jurisdiction. *Held* that the jurisdiction of the Magistrate who disposed of the case was not barred by the circumstance of the petitioner being resident at Cawnpore, or of the former application having been rejected. IN THE MATTER OF THE PETITION OF TODD [5 N. W., 237

10. ——— *Criminal Procedure Code, s. 488—Order for maintenance of wife—Wife living apart from her husband for good cause—Temporary absence—Jurisdiction.*—Where a wife, after a temporary ... on a visit, found on her re- ... there- ... strict ... wife

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*continued.*

being justified in refusing to live with her husband and in choosing her own place of residence, the neglect of her husband to maintain her was an offence within the jurisdiction of the appropriate Court at the place where the wife resided. *In re the petition of Fakruddin, I. L. R., 9 Bom., 40,* distinguished. *In the matter of the petition of Tedd, 5 N. W., 237,* followed. IN THE MATTER OF THE PETITION OF DECASTRO . . . I. L. R., 13 All., 348

11. ———— Procedure in maintenance cases—*Criminal Procedure Code, 1872, s. 536—Mode of recording evidence.*—Cases under Act X of 1872, s. 536, are not in the nature of summary trials, but require the usual procedure laid down for summons cases, and that the evidence be recorded in full as required by s. 335. HURKISHORE MALO *v.* BHAROTI JELTANI . . . 24 W. R., Cr., 61

12. ———— *Proceedings on application for maintenance—Evidence, Record of—Summary trial—Criminal Procedure Code (Act X of 1882), ss. 355 and 488—Procedure.*—Proceedings under Ch. XXXVI of the Code of Criminal Procedure cannot be conducted as in a summary trial under Ch. XXII, but the evidence taken must be recorded as provided by s. 355. KALI DASSI *v.* DURGA CHARAN NAIK . I. L. R., 20 Calc., 351

13. ———— Proof of charge—*"Due proof"—Criminal Procedure Code, 1861, s. 316, Order under.*—Before an order under s. 316 of the Code of

[illegible]

14. ———— *Nature of evidence—Ground for making order.*—An order made by a Magistrate under s. 316 of the Code of Criminal Procedure must be founded upon proof in the same proceedings, and not upon knowledge acquired by him in some other case LOROTEE DOMNEE *v.* TIKHA MOODAI . . . . 8 W. R., Cr., 67

15. ———— *Criminal Procedure Code, 1872, s. 488—Evidence Act (I of 1872), s. 120—Bastardy proceedings—Order of affiliation—Evidence—Competent witness—*Bas-

[illegible]

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*continued.*

[illegible]

BISMULLA JAN . . I. L. R., 16 Calc., 781

[illegible]

wife of a Christain who had reverted to Hinduism and married a second wife is not warranted by the decision in *Anonymous Case, 3 Mad., Ap., 7.* ANONYMOUS CASE . . . 4 Mad., Ap., 3

17. ———— Marriage, Proof of—*Karao marriage, Validity of—Legitimacy of offspring of—Right to maintenance.*—A woman of the Jat caste applied under s. 316 of the Code of Criminal Procedure for an order of maintenance. As she had only gone through the ceremony of "Karao" with her alleged husband, the Joint Magistrate rejected her ap-

[illegible]

19. ———— *Criminal Procedure Code, 1872, s. 536—Separate maintenance on ground of ill treatment.*—The proviso to s. 536 of

[illegible]

but who has of her own accord left her husband's house and protection, and to order an allowance to be paid to such wife on evidence of ill-treatment. IN THE MATTER OF THE PETITION OF THOMSON

[6 N. W., 205

20. ———— *Criminal Procedure Code, s. 488—"Cruelty."*—The word "cruelty" in s. 488 of the Criminal Procedure Code is not necessarily limited to personal violence. *Kelly v. Kelly, L. R., 2 P. D., 59,* and *Tomkins v. Tomkins, 1 S. & T., 168,* referred to RUKMIN *v.* PEARE LAL

[I. L. R., 11 All., 480

21. ———— Offer to maintain wife—*Criminal Procedure Code, 1872, s. 536—Refusal*

[illegible]

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*continued.*

22. ———— *Criminal Procedure Code, s. 488—Question to be determined under that section—Maintenance of wife—Wife's right to separate maintenance.*—Before a Magistrate makes an order under s. 488 of the Code of Criminal Procedure (Act X of 1882), he must find that the complainant is the wife of the person from whom she claims maintenance, and that he has either neglected or refused to maintain her The complainant claimed maintenance from her husband, *G*, under s. 488 of the

Held that there is no authority for the proposition that the words "as his wife" should be read into s. 488 of the Code of Criminal Procedure. *Marakkal v. Kandappa Goundan, I. L. R., 6 Mad., 371,* dissented from. IN RE GULABDAS BHAIDAS

[I. L. R., 16 Bom., 269

23. ———— *Criminal Procedure Code (1882), s. 488—"Adultery"—Penal Code (Act XLV of 1860), s. 497—Refusal of wife to live with husband—Criminal Procedure Code, s. 4.*—A wife petitioned for maintenance for herself and

24. ———— *Criminal Procedure Code (1882), s. 488 and s. 4—Adultery.* Adultery on the part of the husband, not being such adultery as would be punishable under the Penal Code, may nevertheless constitute sufficient cause for the wife separating from her husband, and enable her to claim maintenance under the Criminal Procedure Code, s. 488. *Queen-Empress v. Mametta Achari, I. L. R., 7 Mad., 260,* dissented from. GANTAPALLI APPALAMMA *v.* GANTAPALLI YELLAYYA. PERIANAYAGAM *v.* KRISHNA CHETTI I. L. R., 20 Mad., 470

25. ———— **Refusal by Hindu wife to live with husband for sufficient reason**—*Criminal Procedure Code, 1882, s. 488—Second marriage by husband.*—A Hindu wife having applied for an order for maintenance against her husband, the husband offered to maintain her in his house but the offer was refused on the ground that the husband had, without cause, married a second wife. The Magistrate ordered the husband to pay a monthly sum by way of maintenance. *Held* that the fact that the husband had married a second wife was not a sufficient reason, within the meaning of s. 488 of the Code of Criminal Procedure, to justify the order. ARUMUGAM *v.* TULUKANAM . . . I. L. R., 7 Mad., 187

26. ———— **Wife not permitted to live with husband**—*Criminal Procedure Code, 1872, s. 536.*—In a case in which a Magistrate made an order under s. 536, Criminal Procedure Code, 1872,

t set aside

that the

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er father,

and that the father had refused to . . the wife live with her husband without receiving money from him. An order under s. 536 cannot be made by a Magistrate of the second class. SOMBEE *v.* JITTU SONAR . . . . 22 W. R., Cr., 30

27. ———— **Ground for cancelling order**—*Proof of adultery.*—It is open to a husband upon whom an order to make an allowance for the maintenance of his wife has been made under s. 316, Criminal Procedure Code, 1869, after such order has been made to prove that his wife is living in adultery; and upon such proof a Magistrate is justified in cancelling such order for maintenance. CHAKU *v.* ISNVAR BURDAR . . . . . 8 Bom., Cr., 134

28 ———— *Criminal Procedure Code, ss. 488, 490—Order for maintenance of wife—Application by wife to enforce order—Duty of Court*

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Procedure, to entertain a plea by the . . to the effect whom the order is sought to be enforced that he has divorced the applicant, and is therefore no

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*continued.*

longer liable to pay maintenance. *Zeb-un-nissa v. Mendu Khan, Weekly Notes, All., 1885, p. 25,* dissented from. MAHBUBAN *v.* FAKIR BAKHSH

[I. L. R., 15 All., 143

29. ———— **Alteration or withdrawal of order**—*Divorce—Criminal Procedure Code*

POOR AUBUT *v.* JUBAI

[10 B. L. R., Ap., 33 : 19 W. R., Cr., 73

30. ———— *Presidency Magistrate's Act (IV of 1877), ss. 234, 235—Effect of divorce on maintenance order.*—A Presidency Magistrate is competent to stay an order for maintenance granted under s. 234 of Act IV of 1877, and to refuse to issue his warrant under the 3rd clause of that section, and to try all questions raised before him which affect the right of a woman to receive maintenance. There can be no distinction raised between a dissolution of marriage obtained under the Indian Di-

31. ———— **Effect of maintenance order on right of divorce**—*Presidency Magistrates' Act (IV of 1877), s. 234—Borah Mahomedan sect—Husband and wife.*—An order made under

[I. L. R., 7 Bom., 180

Also so held with regard to an order under s. 10 of the Police Amendment Act, XLVIII of 1860. IN RE KASAM PIRBHAI . . . 8 Bom., Cr., 95

32. ———— *Act X of 1872 (Criminal Procedure Code), s. 536—Mahomedan law—Divorce—"Iddat."*—An order for the maintenance of a wife, passed under Ch. XLI of Act X of 1872, becomes inoperative, in the case of a

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*continued.*

Ma wif tion of

Sakhina, I. L. R., 5 Calc., 558; In re Kasam Pirbhai, 8 Bom., Cr., 95; and *Luddun Sahiba v.*

See LARAITI *v.* RAM DIAL I. L. R., 5 All., 224

33. ———— *Mahomedan law—Shiah school—Mutta marriage—Gift of term—Divorce.*—In a suit brought by a Mahomedan of the Shiah sect against his wife, belonging to the same persuasion, for a declaration that the relationship of husband and wife had terminated, and that he was not liable to pay maintenance to her which he had been directed to do by an order passed under the provisions of the Code of Criminal Procedure, on the allegation that the marriage was of a mutta form, and

order after the Civil Court had found that the relationship of husband and wife had ceased to exist. MAHOMED ABID ALI KUMAR KADAR *v.* LUDDEN SAHIBA

[I. L. R., 14 Calc., 276

34. ———— *Criminal Procedure Code (1882), ss. 488, 489, and 490—Plea of divorce in answer to an application for enforcement of an order for maintenance of a wife.*—Where in

marriage ceased to subsist between the parties. In

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*continued.*

Din Muhammad, I. L. R., 5 All., 226 ; Abdur Rohoman v. *Sakhina, I. L. R., 5 Calc., 558 ; Zeb-un-nissa* v. *Mendu Khan, Weekly Notes, All. (1885), 29 ; In re Kasam Pirbhai, 8 Bom., 95 ; In re Abdul Ali Ismailji, I. L. R., 7 Bom., 180 ; Mahomed Abid Ali Kumar Kadur* v. *Ludden Sahiba, I. L. R., 14 Calc., 276 ;* and *Baji* v. *Nawab Khan, 29 Panj. Rec. 69,* referred to. *Nepoor Aurut* v. *Jurai, 10 B. L. R., Ap., 33,* dissented from. *Mahbuban* v. *Fakir Bakhsh, I. L. R., 15 All., 143,* overruled. ABU ILYAS *v.* ULFAT BIBI . . . . . I. L. R., 18 All., 50

35. ———— Effect of decree of Civil Court on order for maintenance—*Decree in suit for restitution of conjugal rights.*—An order for maintenance ceases to have any effect after the order of a Civil Court in a suit for restitution of conjugal rights by the husband giving him a decree. LUTPOTEE DOOMONY *v.* TIKHA MOODOI

[13 W. R., Cr., 52

36. ———— *Criminal Procedure Code (Act X of 1882), s. 488—Maintenance order obtained by a wife against husband—Subsequent* [illegible]

order of a Magistrate for maintenance, if the wife [illegible]

37. ———— *Order as to paternity of child.*—The order of a Civil Court as to the paternity of a child was held to have no effect on a contrary order of the Criminal Court making the putative father, whom the order of the Civil Court had exonerated, liable for maintenance. SUBAD DOMNI *v.* KATIRAM DOME . 20 W. R., Cr., 58

38. ———— Effect of decree of Civil Court on right to apply for maintenance—*Decree of Civil Court refusing to enforce agreement for maintenance.*—A decision of the Civil Court, refusing to enforce a contract or agreement against a man for the maintenance of a woman, cannot conclude either the woman from applying, or a Magistrate from making an order, under s. 316 of the Code of Criminal Procedure, 1861, for the maintenance of their illegitimate daughter. IN THE MATTER OF THE PETITION OF MEISLEBACH . 17 W. R., Cr., 49

39. ———— *Criminal Procedure Code (1882), s. 488—Order for maintenance of wife, Effect on, of declaratory decree of Civil Court.*—An order for the maintenance of a wife duly made under s. 488 of the Code of Criminal Procedure cannot be superseded by a declaratory decree of a Civil Court to the effect that the wife in whose favour such order has been made has no right to maintenance. *Subad Domni* v. *Katiram Dome, 20 W. R., Cr.,* referred to. SUBHUDRA *v.* BASDEO DUBE . . . . I. L. R., 18 All., 29

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*continued.*

40. ———— Grounds for releasing person from obligation to support illegitimate child.—The circumstance that the father of an illegitimate [illegible]

[illegible] viding for his illegitimate offspring [illegible] that the person on whom the order of maintenance is issued must have sufficient means to support the child. QUEEN *v.* ROSHUN LALL . 4 N. W., 123

[illegible] had failed to establish her right of maintenance under that section, but he awarded maintenance to her for her two infant children, though the husband stated he was willing to take charge of them, provided they lived with him. *Held* the order was illegal. PANCHUDAS *v.* SHUDHAMAYI

[8 B. L. R., Ap., 19 : 16 W. R., Cr., 73

42. ———— Order for maintenance of unborn child—*Criminal Procedure Code, 1861, s. 316.*—No order can be passed under s. 316 of the Criminal Procedure Code, 1861, for the maintenance of an unborn child. LABLEE *v.* BUNSEE DITCHIT

[3 N. W., 70

43. ———— Order with reference to husband's means—*Criminal Procedure Code, 1861, s. 317.*—The proceedings of a Magistrate awarding the payment of a certain sum of money per mensem for maintenance with reference to the means of the husband were held to be legal. If the husband is aggrieved, he ought to apply to the Magistrate under s. 317, Code of Criminal Procedure. GOYAMONEY SURINEE *v.* MOHESH CHUNDER SHAHA

[9 W. R., Cr., 1

44. ———— Prospective order for increased maintenance as child gets older—*Criminal Procedure Code, 1861, s. 316.*—An order made under s. 316 of the Criminal Procedure Code, [illegible] child, contain [illegible] of the amount [illegible] authorised by [illegible] N. W., 454

45. ———— Order at progressively increasing rate—*Criminal Procedure Code (Act X of 1882), ss. 488, 489.*—A Magistrate has no power, under s. 488 of the Code of Criminal Procedure, to make an order for maintenance at a progressively increasing rate. He may, however, under s. 489, from time to time alter the rate of the monthly allowance granted as maintenance under s. 488. UPENDRA NATH DHAL *v.* SOUDAMINI DASI

[I. L. R., 13 Calc., 535

46. ———— *Criminal Procedure Code, s. 489—Maintenance, Variation in rate of.*—A Magistrate has no power under Criminal Procedure Code, s. 489, to make an order for maintenance at progressively increasing rate, but the

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*continued.*

47. ——— Security for performance of order—*Criminal Procedure Code, 1872, s. 536* —*Power to take security for prevention of default.* —In making an order for maintenance under the Code of Criminal Procedure, s 536, a Magistrate has no power to take security for possible default. KANOO SCUDAGUR *v.* ALABUNDEE BEWA [24 W. R., Cr., 72

48. ——— Agreement by husband to maintain wife—*Criminal Procedure Code, 1872, s 536.*—An agreement by a husband to maintain his wife by giving her a house and jewels, and by delivering to her annually a certain quantity of grain and money, cannot be made the subject of an order under s. 536 of the Code of Criminal Procedure, 1872, nor enforced under the provisions of that section. VIRAMMA *v.* NARAYYA [I. L. R., 6 Mad., 283

49. ——— Question as to right of guardianship—*Criminal Procedure Code, 1872, ss. 536, 538—Custody of child.*—In determining

50. ——— Effect of order for maintenance—*Suit for maintenance*—S 316 of Act XXV of 1861 is no bar to a suit by a wife against her husband for maintenance. LALLAH GOPEENATH *v.* JEETUN KOER . . . 6 W. R., 57

51. ——— *Criminal Procedure Code, s. 489* —*Release of claim for maintenance.*—Where an application is made to a Magistrate to enforce an order for maintenance passed

52. ——— Mode of enforcing order for accumulated arrears of maintenance—*Criminal Procedure Code, 1872, s 536.*—There is nothing in s 536 of the Criminal Procedure Code, 1872, to render the levy of accumulated arrears of maintenance by a single warrant illegal. ANONYMOUS [7 Mad., Ap., 37

53. ——— Warrant for collection of

54. ——— Mode of enforcing order—*Criminal Procedure Code, 1869, s 316.*—The issue of a warrant under s 316 of the Code of Criminal Procedure is permissible for every breach of an order of maintenance made under that section, but there

55. ——— Imprisonment for default of payment—*Criminal Procedure Code, s 488 —Subsequent offer to pay—Sentence absolute.*—A sentence of imprisonment awarded under s. 488 of the Code of Criminal Procedure for wilful neglect

56. ——— *Criminal Procedure Code (1882), s. 488—Breach of order for monthly allowance—Sentence absolute—Husband and wife.*—A wife, who had obtained an order for

mains in force. *Held* also that, before an order for imprisonment under the section can be passed, it

can be awarded under the section is not a punishment for contempt of the Court's order, but merely a means

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*continued.*

of enforcing payment of the amount due, and that, upon the payment of that amount being made, the husband was entitled to be released. *Biyacha* v. *Moidin Kutti, I. L. R., 8 Mad., 70,* dissented from. SIDHESWAR TEOR *v.* GYANADA DASI [I. L. R., 22 Calc., 291

57. ——— *Criminal Procedure Code (1882), s. 488.*—The imprisonment provided by s. 488, Criminal Procedure Code, in default of payment of maintenance awarded, is not limited to one month. The maximum imprisonment that can be imposed is one month for each month's arrear, and if there is a balance representing the arrear for a portion of a month, a further term of a month's imprisonment may be imposed for such arrear. *Biyacha* v. *Moiden Kutti, I. L. R., 8 Mad., 70,* approved of ALLAPICHAI RAVUTHAR *v.* MOHIDIN BIBI . . . . I. L. R., 20 Mad., 3

58. ——— *Criminal Procedure Code (Act X of 1882), s. 488—Warrant of commitment—Procedure.*—An order of commitment to prison for default in payment of a wife's maintenance allowance cannot be made without proof that the non-payment was due to wilful neglect of the person ordered to pay. *Sidheswar Teor* v. *Gyanada Dasi, I. L. R., 22 Calc., 291,* followed. The law contemplates a single warrant of commitment in respect of the arrears due at the time of its issue. Where six months' arrears were due, an order for separate warrants of commitment awarding a separate sentence of imprisonment of one month on each warrant was therefore held to be bad in law. As to the mode of computing the term of imprisonment, the case of *Allapichai Ravuthar* v. *Mohidin Bibi, I. L. R., 20 Mad., 3,* followed. BHIKU KHAN *v.* ZAHURAN . . . I. L. R., 25 Calc., 291

59. ——— *Criminal Procedure Code, s. 488—Wife—Breach of order for monthly allowance—Warrant for leaving arrears for several months—Imprisonment for allowance remaining unpaid after execution of warrant—General Clauses Consolidation Act (I of 1868), s 2, cl. 18—"Imprisonment."*—Where a claim for accumulated arrears of maintenance for several months arising under several breaches of an order for maintenance is dealt with in one proceeding, and arrears levied under a single warrant, the Magistrate acting under s. 488 of the Criminal Procedure Code has no power to pass a heavier sentence in default than one month's imprisonment, as if the warrant only related to a single breach of the order. *Per* EDGE, C.J.—S. 488 contemplates that a separate warrant should issue for each separate monthly breach of the order. *Per* STRAIGHT, J.—The third paragraph of s. 488 [illegible] as possible, [illegible] the sec- [illegible] a term [illegible] respect [illegible] tenance, [illegible] *bona* is the return. The section contemplates one warrant, one punishment, and not a cumulative warrant and cumulative punishment. Also *per* STRAIGHT, J.—With reference to s 2, cl. 18, of the General Clauses Act (I of 1868) "imprisonment" in s 488 of the Criminal Procedure Code may be either simple or rigorous. *Per* OLDFIELD, J. A claim for accumulated arrears of maintenance arising under several breaches of order may be dealt with in one proceeding, and arrears levied under a single warrant QUEEN-EMPRESS *v.* NARAIN . . I. L. R., 9 All., 240

MAJORITY ACT (IX OF 1875).

See MAJORITY, AGE OF. [I. L. R., 7 All., 490

——— s. 2

See MAJORITY, AGE OF. [I. L. R., 7 All., 763

1. ——— *Minor—Mahomedan law—Capacity to contract—Capacity to sue—Civil Procedure Code, 1877, Ch. XXXI, ss. 440-464.*—S. 2 of Act IX of 1875 refers only to the capacity to contract, which is limited by s. 11 of the Contract Act, and not to the capacity to sue, which is purely a question of procedure and regulated by the Civil Procedure Code, Ch. XXXI. PUTHIYA ITHAYI UMAH *v.* KAIRHIRAPOKIL MAHOD [I. L. R., 3 Mad., 248

2 ——— cl. (b)—*Minor, Custody of—Guardian—Change of religion.*—A Brahman boy, sixteen years of age, having left his father's house, went to and resided in the house of a missionary, where he embraced Christianity and was baptised. In a suit by the father to recover possession of his son from the missionary,—*Held* that the question whether the boy was a minor was to be decided, not according to Hindu law, but by Act IX of 1875; (2) that the claim was not affected by s. 2, cl. (b), of that Act; (3) and that the father was entitled to a decree that his son should be delivered into his custody. READE *v.* KRISHNA . . I. L. R., 9 Mad., 391

——— ss. 2 and 3.

See PARSIS . I. L. R., 23 Bom., 430

——— s. 3.

See ACT XL OF 1858, s. 3. [I. L. R., 9 Calc., 901
I. L. R., 8 Calc., 714

See LETTERS OF ADMINISTRATION. [I. L. R., 21 Calc., 911

See MAJORITY, AGE OF [I. L. R., 3 All., 509

See MINOR—CUSTODY OF MINORS. [I. L. R., 13 All., 213

1. ——— *Testamentary guardian obtaining probate—"Guardian appointed by Court*—Where a person who by his father's will is made guardian of his minor brother applies for and obtains probate of the will, the grant of probate only establishes the authority of his appointment. Such a guardian is not one "appointed by a Court of Justice" within the meaning of cl. 1, s. 3, Act IX of

MAJORITY ACT (IX OF 1875)—*continued.*

1875, and the minor attains majority on his completing the age of eighteen years. JOGESH CHUNDER CHUCKERBUTTY *v.* UMATARA DEBYA

[2 C. L. R., 577

2. ——— ——— — *Age of majority—Order of Court under Act XL of 1858 appointing guardian, Effect of*—In a suit in Calcutta against one of the makers of a joint promissory note executed in Calcutta on the 9th June 1877, the defendant, who was a Mahomedan, pleaded infancy. It appeared that the defendant was born on the 22nd July 1857; that, by an order of a competent Court, dated 6th November 1865, the father of the defendant was, under Act XL of 1858, appointed guardian of his property, portion of which was situated in the mofussil. *Held* that the effect of the order under Act XL of 1858 was to extend the minority of the defendant to the age of eighteen years, and that consequently he was a minor on the 22nd June 1875, when the Majority Act IX of 1875 came in force; and therefore, under s 3 of the latter Act, his minority was further extended to the age of twenty-one years, so that on the date of the execution of the note the defendant was still a minor. RAJ COOMAR RAY *v.* ALFUZUDIN AHMED . . . . 8 C. L. R., 419

3. ——— *Minor—Guardian ad litem*—The appointment of a guardian *ad litem* is sufficient to make the minor party subject to s. 3, Act IX of 1875, and to constitute his period of majority at twenty one, at any rate so far as relates to the pro-

4. ——— *Guardian—Minor—Disability of infancy; its continuance—Period of* [illegible]

5. ——— *Minor under Court of Wards*—A "minor under the jurisdiction of the Court of Wards" means a person of whose estate the Court of Wards has actually assumed the management, not a person of whose estate the Court of Wards might with the sanction of Government take charge. PERIYASAMI *v.* SESHADRI AYYANGAR

[I. L. R., 3 Mad., 11

6. ——— *Minor—Guardian—Guardian of property—Guardian of person—Necessity for issue of certificate of administration in order to* [illegible]

But it is different as regards the appointment of the guardian of the person The Act provides, in terms, for such an appointment being made, and no certificate of appointment is contemplated by the Act on the language of which it is plain that the appointment of a guardian of the person is complete on the order of the Court being made appointing him. The plaintiff's mother *G* died in 1866 possessed of property which she had inherited from her husband. The plaintiff, who was born in 1858, was then a minor of the age of eight years. In 1867 the plaintiff's maternal grandfather obtained a certificate of administration. On his death an order of Court was made on the 21st March 1873, appointing the nazir of the Court administrator of the property and the plaintiff's mother-in-law the guardian of the person of the plaintiff, but no fresh certificate of administration was granted. In 1880 the plaintiff brought the present suit against the defendants to recover from them the property left by her mother The defendants contended (*inter alia*) that the plaintiff had attained her majority in 1874, when she arrived at the age of sixteen, and that the suit was therefore barred by limitation. The plaintiff, on the other hand, contended that the Indian Majority Act (IX of 1875) was applicable, and that under its provisions she did not attain majority until she was twenty-one, *i e*, until the year 1879, and that the present suit was therefore in time. *Held* that the suit was not barred by limitation. The Indian Majority Act (IX of 1875) was applicable (except so far as its operation was excluded by s. 2), inasmuch as there was a guardian of the person of the plaintiff in existence both when she arrived at the age of sixteen and also when she was eighteen, and therefore the period of [illegible]

of a [illegible]

has [illegible]

the [illegible]

7. ——— *Minor—Age of majority—Guardian and Manager—Act XL of 1858, ss. 4, 7, 12—Collector—Court—Court of Wards Act (Beng Act IX of 1879), ss. 7-11, 20, 65.*—In a suit to recover money due upon certain [illegible]

he was nineteen years of age, his estate had been released by the Court of Wards and was made over to his father on the 17th December; that on the 30th December the District Judge held that he was still a minor, and appointed a manager

MAJORITY ACT (IX OF 1875)—*concluded.*

appointed within the meaning of s. 3 of the Indian Majority Act (IX of 1875), and as the defendant was not under the jurisdiction of the Court of Wards at the time of the execution of the promissory notes, he was then no longer a minor, but *sui juris* and competent to enter into a binding contract. *Held* that the Collector is not a Court of Justice within the meaning of s. 3 of the Majority Act A Collector appointed under s. 12 of Act XL of 1858 cannot properly be styled the guardian of a minor's property. *Held* that under s. 3 of the Majority Act the disability of minority only continues so long as the Court of Wards retains charge of a minor's property and no longer. *Rudra Prokash Misser* v. *Bhola Nath Mookerjee, I. L. R., 12 Calc., 612,* referred to and commented on. BIRJMOHUN LALL *v.* RUDRA PERKASH MISSER . . . I. L. R., 17 Calc., 944

8. ——— *Minority, Period of, where guardian has once been appointed, although no longer in existence—Guardians and Wards Act (VIII of 1890), s. 52—Suit on promissory note executed by minor*—The defendant was sued upon a promissory note executed by him on the 21th August 1892, he being at that time nineteen years of age. Eight years previously, *viz*, on the 4th March 1884, a guardian of his person and property had been appointed by an order of the High Court, but the guardian had been discharged on the 25th June 1892, and at the time of the execution of the note ... either of ... regard to t... Act (IX o... at the date of the note GORDHANDAS JADOWJI *v.* HARIVALUBHDAS BHAIDAS I. L. R., 21 Bom., 281

MAJORITY, AGE OF—

See GUARDIAN—APPOINTMENT.
[I. L. R., 18 Bom., 380

See LIMITATION ACT, 1877, s. 7.
[5 C. L. R., 543

See PARSIS . I. L. R., 22 Bom., 430

1. ——— Hindu, resident and domiciled in Calcutta, Majority of.—The age of majority of a Hindu resident and domiciled in the town of Calcutta, and not possessed of any property in the mofussil, is the end of fifteen years. CALLY CHURN MULLICK *v.* BHUGGOBUTTY CHURN MULLICK. IN THE MATTER OF BENOD BEHARY MULLICK [10 B. L. R., F. B., 231: 19 W. R., 110

DOORGA MOYEE DOSSEE *v.* JUGGESSUR HATI
[1 W. R., 75

Contra, IN THE MATTER OF HEMNATH BOSE
[1 Hyde, 111

PURMESHUR OJHA *v.* GOOLBEE . 11 W. R., 440

MAJORITY, AGE OF—*continued.*

TARINEE PERSHAD SEIN *v.* DWARKANATH RUKHEET . . . . . 15 W. R., 451

2. ——— *Hindu law—Act XL of 1858.*—A Hindu, resident and domiciled in Calcutta and possessed of lands in the mofussil, borrowed in Calcutta a sum of money from the plaintiff, a professional money-lender, and agreed by his bond to repay the principal with interest at 36 per cent. per annum in Calcutta. The defendant's age, at the time he executed the bond, was sixteen years and one or two months; but neither his person nor his property had been taken charge of by the Court of Wards or by any Civil Court. The defendant having made default in payment, the plaintiff broug... his m... to th... Act ... the c... cuted the bond, and that therefore he was liable on it. MOTHOORMOHUN ROY *v.* SOORENDRO NARAIN DEB . I. L. R., 1 Calc., 108: 24 W. R., 434

3. ——— Construction of will—*Executor—Grant of probate, Refusal of, to minor.*—A Hindu domiciled with his family at Serampore, in the zillah of Hooghly, died, leaving a will, in which was the following direction: "In order to look after the affairs, to conduct suits and manage the debts and dues relative to my real and personal estates, my eldest son, *H C G*, who has attained the age of majority, remains executor, for my younger son, *G C G*, is an infant; but as my eldest sister, *S H D*, is prudent and sensible, all the affairs of the estates shall be under her superintendence; and my eldest son shall do all the acts according to her advice and direction. But when my younger son, *G C G*, will come of age, then both the brothers shall be competent personally to manage the affairs; at that time the advice and superintendence of my said sister shall not remain." *G C G*, after attaining the age of sixteen, but before he had reached the age of eighteen, applied for grant of probate of his father's will to himself, jointly with his brother *H* ... The Court ...

GOSAIN . . . . . 4 B. L. R., Ap. ...

S. C. on appeal . . . 5 B. L. R., 80

4. ——— Mahomedan not subject to Court of Wards.—In the case of Mahomedans not subject to the Court of Wards, the limit of minority was held to be at least sixteen years. ABDOOL OAHAB CHOWDHURY *v.* ELIAS BANOO
[8 W. R., 301

5. ——— Proprietors paying revenue to Government—*Beng. Reg. XXVI of 1793, s. 3*—The holder of an estate paying revenue direct to Government, whether the settlement of that estate be temporary or permanent, was a proprietor within

MAJORITY, AGE OF—*continued.*

the meaning of s. 3, Regulation XXVI of 1793; and the minority of such a proprietor extended to the end of the eighteenth year. HURO MONEE DEBIA *v.* TUMEEZOODEEN CHOWDHRY . 7 W. R., 181

BEER KISHORE SUHYE SINGH *v.* HUR BULLUB NARAIN SINGH . . 7 W. R., 503

6. ———— *Beng Reg. XXVI of 1793, s 2—Contracts as to real estate and personal contracts* —S. 2, Regulation XXVI of 1793, extended the term of minority of proprietors of estates paying revenue to Government from the end of the fifteenth to the end of the eighteenth year, in respect of all acts done by such proprietors, both as to matters connected with real estate and matters of personal contract. BYKUNTNATH ROY CHOWDHRY *v* POGOSE [5 W. R., 2

7. ———— *Proprietors out of possession—Beng. Reg XXVI of 1793.*—Regulation XXVI of 1793 applied to proprietors out of possession as well as to those in possession, and was not overridden by the Mahomedan law with reference to majority. ENAET HOSSEIN *v.* ROSHAN JAHAN. ROSHAN JAHAN *v.* ENAET HOSSEIN . 5 W. R., 4

8. ———— *Sale of estate by Mahomedan proprietor—Beng. Reg. XXVI of 1793, s. 2.—Semble*—In respect of a transaction in which a Mahomedan, the proprietor of an estate paying revenue to Government, disposes of that estate,

9. ———— *Co-sharer—Beng.*

10. ———— Hindu—*Bom. Reg. V of 1827, s. 7—Minor—Application for execution of decree.*

[10 Bom., H. C., 60

11 ———— Person not European British subject—*Act XL of 1858—Majority of Hindus.*—Every person not being a European British subject, who has not attained the age of eighteen years, is a minor for the purposes of Act XL of 1858, and

jurisdiction of the Civil Court; and he is a minor, whether proceedings have been taken for the protection of his property or the appointment of a guardian or not. MADHUSUDAN MANJI *v.* DEBIGOBINDA NEWGI . . . 1 B. L. R., F. B., 49

S. C. MODHOO SOODUN MANJEE *v.* DABEE GOBIND NEWGEE . . 10 W. R., F. B., 36

ABDOOL HOSSEIN *v.* LUTEEFOONNISSA [11 W. R., 235

12. ———— Person subject to Act XL of 1858—*Act XL of 1858, Certificate under.*—

13. ———— *Limit of minority.*—Discussion as to the limit of minority of Hindus (who are not proprietors paying revenue to Government), and as to the proper construction of s. 26 of Act XL of 1858. MONSOOR ALI *v.* RAMDYAL [3 W. R., 50

14. ———— *Revenue-paying proprietors.*—The age of majority fixed by Act XL of 1858 is not only for proprietors of land paying revenue to Government, but for all persons not being British subjects. LAKHIKANT DUTT *v.* JAGABANDHU CHUCKERBUTTY . 3 B. L. R., Ap., 79

S. C. LUCKHEE KANT DUTT *v.* JUGOBUNDHOO CHUCKERBUTTY . . . 11 W. R., 561

15. ———— *Jurisdiction*—

16. ———— *Power to sue*—

MAJORITY, AGE OF—*continued.*

18. ———— *Act IX of 1875 (Majority Act), s. 3—Minor.*—A minor, of whose person or property a guardian has been appointed under Act XL of 1858, does not attain his majority when he completes the age of eighteen years, but when he completes the age of twenty-one years. KHWAHISH ALI *v.* SURJU PRASAD SINGH

[I. L. R., 3 All., 598

19. ———— European British subject not domiciled in India—*Capacity to contract—Minor, Suit against—Civil Procedure Code, s. 443—Majority Act, IX of 1875—Lex loci—Con-* [illegible]

[illegible]

dorser and drawer. The former alleged that the drawer had requested him to sign his name to the cheque, saying that it was a mere matter of form, and he would not be liable for the amount, and that the bank would only cash the cheque when indorsed by him; and in consequence he consented to indorse it, but that he did so without any intention of incurring liability as indorser; that he received no consideration, and that his indorsement was in blank, and not in favour of the bank, and was converted into a special indorsement without his knowledge and consent. The Court held that, at the time of indorsement, the indorser was a minor under English law, and dismissed the suit on the ground of minority. *Held* that, if the Court was satisfied of the fact of the defendant's minority, it should have complied with the provisions of s. 443 of the Civil Procedure Code. *Held* that, assuming the indorser to have been *sui juris*, the indorsement, taken in conjunction with the facts proved, established a contract by which the indorser was bound to pay the cheque. *Per* STRAIGHT, *Offg. C.J.*, and DUTHOIT, *J.*, that it was by no means clear or certain that there was any rule of international law recognizing the *lex loci contractus* as governing the capacity of the per-

[illegible]

Contract Act must be interpreted as declaring that the capacity of a person in point of age to enter into a binding contract was to be determined by his own personal law, wherever such law was to be found; that this rule was not affected by the Majority Act, so far as concerned persons temporarily residing, but not domiciled in British India, whose contractual capacity was still left to be governed by the personal law of their personal domicile; and that such law in the case of European British subjects was the common law of England, which recognized twenty-one as the age of majority. *Per* OLDFIELD, *J.*, that by the rule of the *jus gentium*, as hitherto understood and recognized in England, the *lex loci* would govern in respect to the capacity to contract, but that in framing the Indian Majority Act, which was the *lex loci* on the subject in India, the Legislature would appear not to have adopted that rule, but, by limiting the operation of the Act to persons domiciled in British India, to have intentionally excluded from its operation persons not domiciled there, and to have left such persons to be governed by the law of their domicile. *Per* BRODHURST, *J.*, that Act IX of 1875 was intended by the Legislature to be applicable, and in fact was applicable, only to European British subjects domiciled in those parts of India referred to in s. 1, and that to any other Euro- [illegible]

[illegible]

of twenty-one years. ROHILKHAND AND KUMAUN BANK *v.* ROW . . . I. L. R., 7 All., 490

20. [illegible] sixteen

[illegible]

(Majority Act), s. 2 (c).—In a suit upon a bond executed on the 5th June 1875 by a Mahomedan who at that date was sixteen years and nine months old, the defendant pleaded that at the time when the bond was executed he was a minor, and that the agreement was therefore not enforceable as against him. *Held* that the defendant, having at the date of the execution of the bond reached the full age of sixteen years, and so attained majority under the Mahomedan law, which, and not the rule contained in s. 26 of the Bengal Minors Act (XL of 1858), was the law applicable to him under s. 2 (c) of the Majority Act (IX of 1875) before the latter Act came into force, was competent in respect of age to make a contract in the sense of s. 11 of the Contract Act (IX of 1872), and the agreement was therefore enforceable as against him. The rule contained in s. 26 of the Bengal Minors Act is limited by its terms to "the purposes of that Act," which provides ex- [illegible] persons and property of [illegible] taken [illegible] and it [illegible] brought [illegible] provided [illegible] that the prolongation of nonage under s. [illegible] applies. DAMODAR DASS *v.* WILAYET HUSAIN

[I. L. R., 7 All., 703

21. ———— European British subject—*Law governing capacity to contract* — The *lex loci contractus* determines the capacity of a person to contract, and reference ought not to be made to the law of his domicile of origin. The privileges and disabilities of minority, so far as they are not removed by express enactment, attach to European British subjects in this country until they have attained the age of twenty-one years. The same rule ought, on principles of justice, equity, and good conscience, to be observed in the Non-Regulation as in the Regulation Provinces. HEARSEY *v.* GIRDHARI LAL . . . . . 3 N. W., 333

MAJORITY, AGE OF—*continued.*

22. ———— *A* stated that he was born in 1848; that his great-grandfather was,

his grandfather was married, that his father married a lady bearing an English name; that he himself and all his relations were Christians, that he was born in Calcutta, and knew of no relatives in Europe *Held* that he was the legitimate descendant of a European British subject, and therefore his age of majority was twenty-one years ROLLO *v* SMITH

[I B L. R, O. C., 10

23. ———— Bombay Minors Act (XX of 1864)—*Minor*—A Hindu to whom Act XX of 1864 *(Bombay Minors Act) is not applied and who is not* governed by the Majority Act, 1875, attains his majority when he attains the age of sixteen years. SHID DESHRAY *v.* RAMCHANDRARAV

[I. L. R., 6 Bom, 463

24. ———— *Charge of property of minor—Act XL of 1858, s 2.—Under Act*

care of the persons of all minors (not being European British subjects) and the charge of their property

care of the persons of minors and charge of their property; and that, until the Court does so, the minors cannot be regarded as wards of the Court, or their property as in its charge. It is only for the purposes of Act XX of 1864 that eighteen is

as is capable of being taken charge of and managed by the Civil Court or a guardian appointed under

MAJORITY, AGE OF—*concluded.*

Act XX of 1864 *Quære*—Whether, under Act XX of 1864, the principal Civil Court of original

MALABAR COMPENSATION FOR TENANTS' IMPROVEMENT ACT (MADRAS ACT I OF 1887).

See CASES UNDER LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS.

MALABAR LAW—ADOPTION.

1. ———— Adoption by the last member of a Nambudri illom.—In a suit for a declaration that the members of the Nambudri illom

its property, the defendants were the karnavan and manager of the plaintiffs' illom and the members of another illom It was found on the evidence that the plaintiffs' karnavan had been adopted unto the Kiluvapura illom, and that subsequently that illom and the plaintiffs' had been amalgamated under a karar executed by, among others, the wife of the last male member of the Kiluvapura illom, and that she had died before this suit. *Held* that the adoption of the plaintiffs' karnavan was valid even assuming that no datta homam was performed, and the last

2. ———— Adoption by the karnavan of a Marumakkatayam tarwad — *Want of consent by the rest of the tarwad.*—A tarwad in Malabar subject to Marumakkatayam law was reduced in number to two persons, *viz*, the karnavan and his younger brother, the plaintiff. They quarrelled, and the former without the consent of the latter adopted as members of the tarwad his son and daughter and her children. On his death the

MALABAR LAW—CUSTODY OF CHILD.

———— Nephews—*Guardianship,—Right of—Ground for exercise of jurisdiction of Civil Court*—The Civil Judge removed two children, governed by the rule of Marumakkatayam, from the custody of their karnavan, and placed them under the

MALABAR LAW—CUSTODY OF CHILD—*concluded.*

guardianship of their father. *Held* by the High Court on appeal that the order should be reversed on the grounds that no case had arisen for the exercise of the Civil Judge's power, and that the order was wholly opposed to the very principle upon which Marumakkatayam depends. THATHU BAPUTTY *v.* CHAKAYATH CHATHU . . 7 Mad., 179

MALABAR LAW—CUSTOM.

See MALABAR LAW—INHERITANCE.
[I. L. R., 15 Mad., 281

1. — — — Nambudri Brahmans—*Proof—Adoption of sister's son*.—A Division Bench of the High Court having directed an issue to be tried by the Subordinate Judge of North Malabar as to whether, by the custom of Malabar, the adoption of a sister's son among Nambudri Brahmans was valid, the Subordinate Judge examined eleven witnesses selected by the parties to the suit all of whom were described as Nambudris of note in both districts of North and South Malabar These witnesses (with the exception of one whose testimony was self contradictory) agreed that the adoption of a daughter's or sister's son is recognized by the customary law of Malabar, and supported their opinion by giving instances of such adoption which had taken place within their knowledge, and named the persons alleged to have been adopted in pursuance of the custom as holding estates by virtue of the title thereby acquired. The Division Bench referred to a Full Bench the question whether the evidence sufficiently established the custom alleged *Held* by the Full Bench (TURNER, *C.J.*, INNES, KINDERSLEY, and MUTTUSAMI AYYAR, *JJ.*) that the evidence was sufficient to establish that the adoption of a sister's son by Nambudri Brahmans is sanctioned by the customary law of Malabar. (*Per* TURNER, *C.J.*, and KINDERSLEY, *J.*) *Semble*—The ruling in *Gopalayyan* v. *Ragupathi Ayyan, 7 Mad., 250*, as to that constitutes sufficient proof of custom, has been too strongly expressed ERANJOLI ILLATH VISHNU NAMBUDRI *v.* ERANJOLI ILLATH KRISHNAN NAMBUDRI . I. L. R., 7 Mad., 3

2. — Nambudris—*Introduction of stranger to perpetuate existence of illam.*—According to the custom prevailing amongst Nambudris in Malabar, a person may be introduced into an illam (family) to perpetuate its existence Such person thereupon becomes a member of the illam, and is *primâ facie* entitled to exercise the uranma rights of the illam (*i.e.*, to act as trustee of temples, the hereditary trusteeship of which is vested in the illam), as well as to enjoy the properties belonging to the illam. KESHAVAN *v.* VASUDEVAN
[I. L. R., 7 Mad., 297

3. ——— Custom in family of the Zamorin Rajas of Calicut—*Presumption as to property in possession of member of family*.—According to the custom obtaining in the family of the Zamorin Rajas of Calicut, property acquired by a stanom-holder and not merged by him in the property of his stanom, or otherwise disposed of by him

MALABAR LAW—CUSTOM—*concluded.*

in his lifetime, becomes, on his death, the property of the kovilagom in which he was born, and, if found in the possession of a member of the kovilagom, belongs presumedly to the kovilagom as common property. VIRA RAYEN *v.* VALIA RANI
[I. L. R., 3 Mad., 141

4. ——— Qualification of yajaman or manager of the family—*Leprosy—Adoption of another person without consent of son who was a leper.*—The last female member of an [illegible] ithout the [illegible] the ulcer- [illegible] *Held* that [illegible] ther from [illegible] tance, and that the son was entitled to have the adoption set aside. CHANDU *v.* SUBBA . I. L. R., 13 Mad., 209

5 ———, Custom of Mapillas—*Co-parcenary.*—There is no authority for saying that the custom of holding property in co-parcenary is a recognized custom among Mapillas in Malabar. KASMI *v.* AYISHAMMA . . . I. L. R., 15 Mad., 60

MALABAR LAW—DEBTS.

——— Hindu Law how far applicable—*Brahmans—Nambudris—Mussads—Liability of sons for father's debt in Hindu law not applicable.*—The principle of Hindu law, which imposes a duty on a son to pay his father's debt, contracted for purposes neither illegal nor immoral, is not applicable to the Malabar Brahmans called Nambudris and Mussads NILAKANDAN *v.* MADHAVAN
[I. L. R., 10 Mad., 9

MALABAR LAW—ENDOWMENT.

See PARTIES—ADDING PARTIES TO SUITS —PLAINTIFFS I. L. R., 10 Mad., 322
[I. L. R., 14 Mad., 489

1. ——— Uralans—*Agreement to increase number of uralans (trustees)—Binding effect of, on minority*.—An agreement by the majority of the uralans (trustees) of a Malabar devaswam (temple) to increase the number of uralans is not binding on a dissentient minority. NARAYANAN *v.* SRIDHARAN
[I. L. R., 5 Mad., 165

2. ——— Trust management *Power of majority.*—Where the majority of the uralans of a Malabar devaswam agreed to renew a kanam on terms beneficial to the devaswam after the question of the renewal had been fairly considered [illegible] of the ma[illegible] nority. [illegible]

3. ——— Uraima or rights of uralan—*Melkoima—Effect of compromise by uralers of the right to manage a devaswam—Claim of certain uralers to exclude others from management—Limitation.*—The uralan's right in a Malabar devaswam was vested in the illam, of which

MALABAR LAW—ENDOWMENT—*continued.*

plaintiff No 1, a Nambudri Brahman, was a member, the defendants represented the family which formerly ruled over the tract of country where the devaswam was situated. The plaintiffs sued for a declaration that their families were entitled to the exclusive management of the affairs of the devaswam It appeared that the plaintiffs and defendants' families had been in joint management since 1845 in accordance with the provisions of a deed of compromise *Held*, (1) on its appearing that the compromise had been entered into by the karnavan of the plaintiffs' illom, and that the compromise was not vitiated by fraud or the like, that the compromise was binding on the plaintiff, (2) that the claim to exclusive management was barred by limitation A legal origin to which the joint enjoyment of the rights of management may be referred may be found in the continuance of what was melkoima in ancient times as a co-trusteeship subsequent to the British rule with the tacit sanction of the British Government, or in the status of the Nambudri family as patrons of the institution NILAKANDAN *v.* PADMANABHA

[I. L. R., 14 Mad., 153

Held [illegible]
above [illegible]
binding [illegible]
had be [illegible]
of the melkoima right; and that the compromise could not be re-opened. NILAKANDHEN NAMBUDIRIPAD *v.* PADMANABHA REVI VARMA

[I. L. R., 18 Mad., 1
L. R., 21 I. A., 128

4. ——— Alienation of endowed property—*Sale of joint property—Uralans of devaswom—Sale by one tarwad without consent of others* —When the uralars of a devaswam were four tarwads,—*Held* that a sale of the uraiama right by one tarwad, without the consent of the others, was altogether invalid, and that the vendee could not redeem a kanam mortgage of the devaswam land, though the mortgagor was karnavan of the tarwad which assumed to sell the uraiama right. UKANDA VARRIYAR *v.* RAMEN NAMBUDIRI . 1 Mad., 262

5 ——— Transfer of right to manage temple—*Lease.*—*A transfer of the right to manage a Malabar temple and its lands by way of lease for a sum of money is illegal* RAMA VARMA TAMBARAN *v.* RAMAN NAYAR I. L. R., 5 Mad., 89

6. ——— *Alienation—Custom* —The founder of a Hindu temple who provides that the uralans (trustees or managers) thereof for the time being shall be the karnavans (chiefs) of four distinct families, may be supposed to have [illegible]

[illegible]

unconnected with the families from which the trustees were to be taken, to be used according to his discretion. There is no authority under the general principles of Hindu law for holding that such trustees have power to make such a transfer. Where a custom relied on as sanctioning such a transfer implies the right to sell the trusteeship for the pecuniary advantage of the trustees, that circumstance alone may justify a decision that the custom relied on is bad in law. Where, from the absence of direct evidence of the nature of a Hindu religious foundation, and the rights, duties, and powers of the trustees, it becomes necessary to refer to usage, the custom to be proved must be one which regulates the particular institution The cases of *Greedharee Doss v. Nundo Kishore Doss, 11 Moore's I. A., 405,* and *Rajah Muttu Ramalinga Setupati v. Perianayagam Pillai, L. R, 1 I. A., 209,* referred to and approved VURMAH VALIA *v.* RAVI VURMAH . . I. L. R., 1 Mad., 235
[L. R., 4 I. A., 76

Affirming decision of High Court in VARMA VALIA (RAJAH OF CHERAKOT KOVILAGOM) *v.* KOTTAYATH KIYAKI KOVILAGATH REVI VARMA MOOTHA RAJAH . . . 7 Mad., 210

See GNANASAMBANDA PANDARA SANNADHI *v.* VELU PANDARAM . I. L. R., 23 Mad., 271

7. ——— Rights of Sthanamdars—Rights of members of a sthanam, *inter se*, considered. MAHOMED *v.* KRISHNAN . I. L. R., 11 Mad., 106

8. ——— Alienability of "sthanam" lands—*Payment of debt.*—Lands attached to the "sthanam" of sthanamdars in Malabar are, unless the contrary be specifically proved in any particular case, liable to alienation and charge, at all events for the payment of debts incurred for the conservation of the sthanam. CHEMMINIKARA MUPPIL NAIR *v.* KILIYANAT UKONA MENON I. L. R., 1 Mad., 88

See VENKATESWARA IYAN *v.* SHEKHARI VARMA
[I. L. R., 3 Mad., 384: L. R., 8 I. A., 143

9. ——— *Grant of perpetual lease* —The grant of a perpetual lease at a fixed rent is not necessarily beyond the powers of a sthanam-holder in a Malabar royal family. MANA VIKRAMAN *v.* SUNDARAN PATTAR
[I. L. R., 4 Mad., 148

10. ——— *Powers of stani—Lease by stani of forest land attached to the stanam.*—A stani in Malabar is not a tenant for life impeachable for waste. He is a person who represents the estate for the time being, and it is open to him to make a lease of forest land for a term of years, and the mere fact that the alienation is intended to hold good after his lifetime will not invalidate it. ITTIRARICHAN UNNI *v.* KUNJUNNI
[I. L. R., 21 Mad., 144

MALABAR LAW—GIFT.

1 ——— Validity of gift—*Delivery of possession* —Plaintiff sued to recover certain land in virtue of an alleged gift from her deceased husband. The parties were subject to the Marumakkatayam

MALABAR LAW—GIFT—*concluded.*

law. The facts were that, the land being in the hands of tenants, a deed of gift with the counterpart lease was delivered by the donor to the plaintiff. It did

KANDILE CHIRUTHAI *v.* KEYAKADATH PEDEL KURUP . . . . 6 Mad., 194

2. ———— Restriction on enjoyment—*Attempt to create estate subject to incidents of Malabar tarwad property—Sale of interest of donee by judgment-creditor.*—The owner of certain land in Malabar made a gift thereof to his two sons and daughter, with the intention that it should be enjoyed by them subject to the incidents of tarwad property—*i.e.*, that the estate should be impartible and held by the donees as joint family estate descendible to the heirs in the female line. *Held* that the interest of one of the donees in the land was liable to be attached and sold in execution of a decree against him. NARAYANAN *v.* KANNAN

[I. L. R., 7 Mad., 315

3 ———— Gift of land to a wife and her children—*Incidents of tarwad property—Liability to attachment in execution of decree*—Land, which originally belonged to one *T*, was given after his death to one of his wives and her children in accordance with a wish orally expressed by him He had not expressed any intention as to how it should be held by the donees It appeared that they were subject to the Marumakkatayam law. *Held* by the Full Bench that they took the land with the incidents of property held by a tarwad *Narayanan v. Kannan, I. L. R., 7 Mad., 315*, dissented from. *Held* by the Division Court accordingly that a decree against the assets of one of the sons could not be executed against the land as a whole or against his share in it. KUNHACHA UMMA *v.* KUTTI MAMMI HAJEE . . I. L. R., 16 Mad., 201

MOIDIN *v* AMBU

[I. L. R., 16 Mad., 203 note

Contra, PARVATHI *v* KORAN

[I. L. R., 16 Mad., 202

MALABAR LAW—INHERITANCE.

1. ———— Issue of parents governed by different systems of law.—Where a woman belonging to a Malabar tarwad governed by the Marumakkatayam law (succession by nephews) has issue by a man who is governed by the Makkatayam law (succession by sons), such issue are *primâ facie* entitled to their father's property in accordance with the Makkatayam law, and to the property of their mother's tarwad in accordance with the Marumakkatayam law. CHATHUNNI *v* SANKARAN

[I. L. R., 8 Mad., 238

2. ———————— *Devolution of property—Marumakkatayam law—Mahomedan law.*—A deceased as well as his paternal ancestors had

MALABAR LAW—INHERITANCE—*continued.*

followed the Mahomedan law; but his mother had been a member of a tarwad which held property subject to Marumakkatayam law. On its being contended that in such a case the property of the

member of a tarwad subject to Marumakkatayam law, is the Mahomedan law. ASSAN *v.* PATHUMMA

[I. L. R., 22 Mad., 494

3. ———— Nambudris—*Inheritance—Sarvasvadhanam marriage—Rights of son.*—Among Nambudris in Malabar, the son of a daughter given in the Sarvasvadhanam form of marriage does not inherit in the family of his father so long as other heirs exist. KUMARAN *v.* NARAYANAN

[I. L. R., 9 Mad., 260

4. ———————— *Appointment of heir—Nambudris, their personal law—Power of*

illom died about 1859, leaving defendant No. 1 and her mother the sole surviving members of the illom. Defendant No. 1 had previously been married to a member of another illom by a sarvasvadhanam marriage, but her husband died without issue. In 1872 defendant No 1 and her mother—there being no attaladakkam heirs—appointed defendant No. 2, an adult member of a third illom, to be manager and heir of their illom and to marry and raise up issue

can adopt or appoint an heir in order to perpetuate her illom in the absence of dayadies with ten or three days' pollution; and the appointment of defendant No 2 was valid against the Crown. *Quære*—Whether in such appointment of an heir it is necessary to direct that he should marry for the illom to which he is appointed as heir. VASUDEVAN *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 11 Mad., 157

5. ———— Mode of succession to pollam—*Private property left by poligar.*—The mode of succession in a pollam is not such as to render the holder responsible for the debts of his predecessor. There is not a continuance of the previous estate in each successive holder, but a fresh

MALABAR LAW—INHERITANCE —*concluded.*

estate created by the gift. However, as respects private property left by a deceased poligar, liability to the extent of the assets taken will attach upon the takers, if there was an obligation upon the owner of property so taken to pay the debt. SUBBA CHETTY *v.* MASTI IMMADI . I. L. R., 3 Mad., 303

6. ———— Exclusion from inheritance—*Aliyasantana law—Uncongenital insanity.*—A Jain, who was subject to the Aliyasantana law, made a will, whereby he disposed of the property of his family in favour of certain persons, and died. The plaintiff, a female, was the sole surviving member of the testator's family, but it was admitted that she was and for more than fifty years had been, a lunatic, though she had not been declared to be so under Act XXXV of 1858, it appeared that her lunacy was not congenital. She sued, by the Collector of South Canara, the Agent for the Court of Wards *Held* that the plaintiff was not excluded from inheritance by reason of lunacy under Aliyasantana law, and the will in favour of the defendants was invalid. SANKU *v.* PUTTAMMA

[I. L. R., 14 Mad., 289

7. ———— Makkatayam rule of inheritance—*Custom of Tiyars in South Malabar.*—A community, following the Makkatayam rule, must not be taken to be necessarily governed by the Hindu law of inheritance with all its incidents Accordingly, when a member of the Tiyar community in Calicut, following that rule, alleged and proved a [illegible]

8. ———— *Tiyans of South Malabar.*—On the death of a Tiyan of South Malabar, following the Makkatayam rule of inheritance, his mother, widow, and daughter are entitled to succeed to his property (acquired by himself and his father) in preference to his father's divided brothers. IMBICHI KANDAN *v.* IMBICHI PENNU

[I. L. R., 19 Mad., 1

9. ———— *Thiyyas of Calicut—Widow—Mother.*—Among the Thiyyas of Calicut governed by the Makkatayam law, the widow of the deceased owner is a preferential heir to his mother KUNHI PENNU *v.* CHIRUDA

[I. L. R., 19 Mad., 440

MALABAR LAW—JOINT FAMILY.

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT . I. L. R., 11 Mad., 106

1. ———— Taverai—*Succession—Tarwad* [illegible] times adopted the same customs, but there is the strongest presumption against the truth of this in the case of the private family. Families becoming very numerous have often split into various branches In the language of the people, there is community of purity and impurity between them, but no community of property In the only sense of the word with which Courts of Justice are concerned, people so related are not of the same tarwad Where there are several houses bearing the same original tarwad name, but with an addition, and there is no evidence of the passing of a member of one house to another, there is the strongest ground for concluding that this separation has taken place. ERAMBAPALLI KORAPEN NAYAR *v.* ERAMBAPALLI CHENEN NAYAR

[6 Mad. 411

2. ———— Joint property—*Acquisitions not disposed of in lifetime—Family property—Presumption from position of karnavan.*—By the law of Malabar all acquisitions of any member of a family which he has not disposed of in his lifetime form part of the family property The acquirer, however, may during his lifetime hold, alienate at once, and encumber, his self-acquisitions A karnavan, in possession of the family funds, is presumed to have made all acquisitions with them and for the benefit of the corporate body. But such presumption is not irrebuttable, and his alienation or charge of such acquisitions made during his lifetime may be valid. KALLATI KUNJU MENON *v.* PALAT ERRACHA MENON . . . . . 2 Mad., 162

3. ———— Self-acquired property—*Assets for payment of debts of deceased acquirer in hands of tarwad.*—The self-acquired property of a member of a Malabar tarwad, which, not being disposed of at the death of the acquirer, lapses into the property of the tarwad, enures as assets of the deceased for the payment of his debts in the hands of the members of the tarwad. RYRAPPAN NAMBIAR *v.* KELU KURUP . . I. L. R., 4 Mad., 150

4. ———— Property assigned for support of females—*Liability of, to attachment in execution of decree against karnavan.*—Property assigned by the males of a Nayar family for the support of their females is still family property, and liable as such to be taken in execution of a judgment against the karnavan. PARRAKEL KOVDI MENON *v.* VADAKENTIL KUNNI PENNA . . 2 Mad., 41

5. ———— Sale of tarwad property—*Powers of karnavan—Assent of members of tarwad, how far necessary.*—There is no rule of Malabar law that the assent of every member of a tarwad is necessary to render valid the alienation of tarwad property. KALLIYANI *v.* NARAYANA

[I. L. R., 9 Mad., 266

6. ———— Claim for improvements—effected by anandravan in tarwad property.—An anandravan has no right to the value of the improvements effected by him on tarwad property upon surrender to the karnavan, when such improvements are not made with private funds. URAMKUMARATH KANNAN NAYAR *v.* URAMKUMARATH TENJU NAYAR . . I. L. R., 5 Mad., 1

MALABAR LAW—JOINT FAMILY —*continued.*

7. ——— Right of member of tarwad to an account—*Right to succeed to management of family property.*—An individual member of a tarwad governed by the Marumakkatayam rule has no right to an account from the karnavan. Each member of a tarwad has a right to succeed by seniority to the management of the family property. KUNIGARATU v. ARRANGADEN . . 2 Mad., 12

8. ——— Right to manage illom—*Nambudri family.*—The right of the eldest member of a Nambudri family to manage the illom is absolute, and where a junior member has in fact managed it, then this is presumed to have been with the permission of the former, who may at any time take up the actual control. NAMBIATAN NAMBUDRI v. NAMBIATAN NAMBUDRI . . 2 Mad., 110

9. ——— Right to manage tarwad—*Right to revoke agency.*—A karnavan who appoints a junior anandravan as his agent to manage part of the tarwad property can, on behalf of the tarwad family, revoke the authority at any time and take the management into his own hands. GOVINDAN v. KANNARAN . . . I. L. R., 1 Mad., 351

10. ——— Power of karnavan to renounce privileges and duties of office—*Semble*—A karnavan cannot part by contract so as to be unable to resume them, with the privileges and duties which attach to his position as karnavan. CHERUKOMEN *alias* GOVINDEN NAIRV v. ISMALA [6 Mad., 145

11. ——— Powers of karnavan—*Delegation of powers of karnavan to his son.*—The

[illegible]

12. ——— Alienation of joint family property—*Signature of karnavan as indicating consent.*—According to Malabar law, a sale of family property is valid when made with the assent, ex-

[illegible]

CINREAGATTA AHAMMADA . . 1 Mad., 248

13. ——— *Power of karna-*

[illegible]

MUTOREN . . . . . 1 Mad., [illegible]

14. ——— *Purchaser, Duty of—Notice.*—It is the unquestionable law of Malabar that tarwad property is inalienable, except in cases of adequate family necessity. In such cases alienations will be upheld; but it lies upon the purchaser to make out with abundant clearness that the purpose was a proper one. The assent of the senior anandravan is some (but rebuttable) evidence that the purpose was proper. *Semble*—That, considering the state of Hindu families, a purchaser would be affected with notice by much slighter evidence than a purchaser in other countries. KOYILOTHPUTEN PURAYIL MANOKI KORAN NAYAR v. PUTHENPURAYIL MANOKI CHANDA NAYAR . 3 Mad., 294

15. ——— *Otti Karnavan, Power of.*—A karnavan singly may make an otti mortgage. EDALHIL ITTI v. KOPASHON NAYAR . . . . . . 1 Mad., 122

16. ——— *Authority of karnavan of tarwad to alienate endowed property.*—The authority of a karnavan to make alienations of the immoveable property of the tarwad stands on a different footing from his power to pledge the credit of the tarwad. The karnavan is not the agent of the family to make alienations, but must have special authority in each case. KOMBI ACHEN v. LAKSHMI AMMA . I. L. R., 5 Mad., 201

17. ——— *Karnavan, Powers of—Perpetual lease.*—The karnavan of a Malabar kovillagom executed a kukanom lease of certain land, the jenm of the kovillagom, in 1846, and in 1861 his successor demised the same land to the same tenants in perpetuity. The present karnavan sued in 1889 to recover possession of the land *Held* that the perpetual lease, as being of an improvident character, was *ultra vires* and void; and (2) that the original lease was not surrendered by the acceptance of the subsequent lease. RAMUNNI v. KERALA VARMA VALIA RAJA [I. L. R., 15 Mad., 166

18. ——— Position of karnavan—[illegible] is not a mere trus-[illegible]

19. ——— The position of a karnavan is not analogous to that of a mere trustee, officer of a corporation, or the like. The person to whom the karnavan bears the closest resemblance [illegible]

REVIVARMAN . . . I. L. R., 1 Mad., 153

20. ——— Power of karnavan.—Incidents of property held by tarwad and by joint Hindu family distinguished. A Court has no power

MALABAR LAW—JOINT FAMILY —*continued.*

to confer on karnavans larger powers than such as are sanctioned by usage. If such powers are insufficient to secure to tarwads the full enjoyment of their estates, or if they are so limited as to interpose obstacles to the establishment of new industries, the extension of such powers must be sought from the Legislature PONAMBILATH PARAPRAVAN KUNHAMOD HAJEE v. PONAMBILATH PARAPRAVAN KUTTIATH HAJEE IOD v PONAMBILATH PARAPRAVAN KUNHAMOD HAJEE . I. L. R., 3 Mad., 169

21. ——— *Powers restricted by family arrangement.*—The ordinary powers of the karnavan of a Malabar tarwad can be restricted by a family agreement to which he is a party, and if, in breach of such agreement, the karnavan makes an alienation to a stranger who has notice of the agreement, the tarwad is not bound by the alienation. KANNA PISHARODI v. KOMBI ACHEN [I. L. R., 8 Mad., 381

22. ——— *Power to set aside family arrangements.*—A karnavan is not entitled of his own authority to set aside a family arrangement made on behalf of all the members of the tarwad. KOMU v. KRISHNA I. L. R., 11 Mad., 134

23. ——— *Compromise of doubtful claims by adult members of a tarwad—Minors, Effect of compromise on.—Semble*—That

24. ——— Position and powers of karnavan—*Powers of alienation of property and*

powered to adopt so as to make persons and their

MALABAR LAW—JOINT FAMILY —*continued.*

25. ——— Karnavan, Decree against —*Execution against tarwad property—Sale—Right of purchaser—Res judicata—Right of junior member of tarwad not impleaded to contest sales of tarwad property in execution of decree against karnavan sued as such.*—When the karnavan of a

as representative of the tarwad, members of the tarwad who are not parties to the proceedings, and have not been represented in the manner prescribed by the Code of Civil Procedure, are not estopped from showing that the debt for which the decree was passed was not binding on the tarwad. ITTIACHAN v. VELAPPAN. KRISHNA v. NANU [I. L. R., 8 Mad., 484

26. ——— *Karnavan's au-*

NURINGA MANGALATH GOPALAN NAYAR v. VALIA TAMBURATTI . . . I. L. R., 7 Mad., 87

27. ——— *Binding effect on tarwad.*—The karnavan of a Malabar tarwad,

Held that the junior members of the tarwad were not estopped by the decree in such suit from redeeming the land Where fraud or breach of duty by a karnavan is proved, his act must be treated as a fraud upon his power, and will not bind the tarwad THENJU v. CHIMMU I. L. R., 7 Mad., 413

28. ——— *The Valiya Liability of* ... a decree ... or and his ... RAJAH v. SHANGARAM . . . I. L. R., 16 Mad., 452

MALABAR LAW—JOINT FAMILY —*continued.*

29. ——— *Suit by anandravans to set aside a sale in execution of decree against their karnavan, when maintainable.*—The lands sued for being the jenm of a devasam were sold in execution of a decree obtained by defendant No 1 against the uralans Plaintiffs, being the anandravans of the uralans, sued to set aside the sale, alleging that the debt was not contracted for devasam purposes, and that the decree was collusive. *Held* that the decree was binding on the plaintiffs unless it had been obtained by fraud and collusion. KELU v. PAIDEL . . . I. L. R., 9 Mad., 473

30. ——— *Suit to set aside decree and recover lands sold under it.*—In suits by a branch karnavan of a Malabar tarwad to recover certain lands belonging to his branch tarwad, which [illegible]

[illegible] was contended that the contrary had been so irrevocably fixed by judicial decision as to prevent the matter from being open to question, and that this finding was bad in law, as being opposed to binding decrees of competent Courts. *Held* by HOLLOWAY, J., (1) that there was nothing compelling the Court to decide, contrary to the plain rules of law, that this delegation was irrevocable; that perhaps it was not so even by the delegator, and still less was it so by his successors; (2) that the fact of the setting apart of santam property, if it was set apart, can make no difference, and as little can the circumstance of the income reserved; (3) that there was [illegible] that the [illegible] was an [illegible] renun- [illegible] irrevo- [illegible] ertainly [illegible] senior member, for all future time, of the rights which the law of the country conferred upon him, with the correlative duties upon his becoming senior. By [illegible]

[illegible] allotment by its senior member, was a matter conclusively adjudicated in the course of the litigation, of which there was proof in the records, that such arrangement operated only as a personal renunciation and delegation of the rights of management possessed by the then head of the tarwad, and that, assuming it to have been irrevocable by him, it was [illegible]

MALABAR LAW—JOINT FAMILY —*continued.*

31. ——— *Suit against karnavan and senior female member of a tarwad—Evidence of intention to sue defendants as representatives of the tarwad.*—The karnavan and senior female member of a Malabar tarwad executed a [illegible] brought [illegible] wad pro- [illegible] tarwad [illegible] xpressly [illegible] The plaintiff [illegible]

[illegible] upon the facts found the plaintiff acquired [illegible] under the Court-sale. ACHUTA v. MAMMAVU [I. L. R., 10 Mad., 357

33. ——— *Representative of tarwad.*—The karnavan and an anandravan of a Malabar tarwad were authorized by a karar to manage the affairs of the tarwad. A decree was obtained [illegible] to the tarwad was [illegible] laint did not [illegible] by their in- [illegible] m was, *inter* [illegible] tract by the [illegible] n of certain [illegible] jenm of the [illegible] the present suit that the amount decreed in the prior suit constituted a debt due by the tarwad. *Held* that the decree and the execution-sale did not bind the tarwad *Daulat Ram v. Mehr Chand, I. L. R., 15 Calc., 70,* distinguished. SANKARAN v. PARVATHI [I. L. R., 12 Mad., 434

34. ——— *Nambudri—Sale in execution of decree.*—A junior member of a Nambudri illom, of which he was held out as the manager and *de facto* karnavan, contracted a debt for the purposes of the illom The creditor sued him on the debt, but did not implead him as karnavan, and, having obtained a personal decree, attached and brought to sale in execution property belonging to the illom. A son of the judgment-debtor now sued to set aside the sale. *Held* that the sale should be set aside. GOVINDA v. KRISHNAN [I. L. R., 15 Mad., 333

35. ——— *Decree for maintenance against karnavan—Execution against tarwad property.*—A member of a Malabar tarwad, having

MALABAR LAW—JOINT FAMILY —*continued.*

obtained a decree for maintenance against her karnavan, assigned the decree to the plaintiff, who proceeded to execute it against the tarwad property. The then karnavan objected and his claim was allowed. In a suit by plaintiff to have it declared that he was entitled to execute the decree against tarwad property,—*Held* that the plaintiff was entitled to execute the decree against the tarwad property. CHANDU *v.* RAMAN I. L. R., 11 Mad., 378

36. ——— *Decree against karnavan and senior anandravan not binding on junior members—Civil Procedure Code, s. 13, expl. 5, s. 50.*—A decree having been obtained against the karnavan and senior anandravan of a Malabar tarwad whereby the tarwad was dispossessed of certain land, the junior members of the tarwad who had not been impleaded in the suit sued to recover the land. *Held* that the plaintiffs were entitled to recover upon proof that the decree in the former suit was not substantially correct, and that they were bound to prove *mala fides* on the part of their karnavan in defending the former suit as a condition precedent to recover. SRIDEVI *v.* KELU ERADI . I. L. R., 10 Mad., 79

37. ——— *Female managing the affairs of a tarwad—Res judicata.*—The senior female member of a Malabar tarwad, who managed its affairs, instituted a suit on behalf of the tarwad and in the capacity of karnavan. *Held* (1) that a female is not precluded from managing the affairs of her tarwad when there is no male member in her family capable of performing the duties of a karnavan; and (2) that the junior members of the tarwad were, in the absence of fraud shown, constructively parties to the suit, and were accordingly bound by the decree. SUBBAMANYAN *v.* GOPALA [I. L. R., 10 Mad., 223

38. ——— *Res judicata—Cancellation of deeds—Declaratory suit—Withdrawal of part of claim.*—*A* and *B*, junior members of a Malabar tarwad, sued to cancel certain mortgages executed by their karnavan and senior anandravan, on the ground that the secured debt was not binding on the tarwad, and to appoint *A*

members of the tarwad who had been joined were exempted from liability. *Held* that the nature of

39. ——— *Suit by junior members of a tarwad—Suit to restrain execution of a decree obtained in a suit against plaintiffs' karnavan—Right of suit.*—In a suit brought in a subordinate Court by the junior members of a Malabar

MALABAR LAW—JOINT FAMILY —*continued.*

the plaintiff's tarwad, from executing a decree of a District Court, passed on appeal from a Munsif's Court, whereby certain lands of the devaswam were

were entitled to maintain the suit without proof of fraud and collusion on the part of their karnavan in the previous suit; and that they were entitled to the decree as prayed. APPU *v.* RAMAN [I. L. R., 14 Mad., 425

40. ——— *Former decrees against karnavan—Civil Procedure Code, s. 13—Limitation Act (XV of 1877), sch. II, arts. 91, 120—"Res judicata."*—In a suit for a declaration

karnavan had been adopted unto the Kiluvapura

of the Limitation Act; (2) that it was unnecessary for the plaintiffs to prove *malâ fides* against their karnavan in respect of his conduct in the former suits or to seek that the decrees passed therein be set aside, and that those decrees did not constitute the present claim *res judicata*, as the karnavan was not then impleaded in his capacity as such; and (3) that the plaintiffs were entitled to a decree as prayed. SHANKARAN *v.* KESAVAN . I. L. R., 15 Mad., 6

41. ——— *Aliyasantana law—Unjustified alienation of family property by a member of undivided family—Partition, Right of*

MALABAR LAW—JOINT FAMILY —*continued.*

—*Adverse possession—Limitation.*—In 1851 the ejaman of an Aliyasantana family mortgaged family property to the ancestor of some of the defendants who and whose alienees were now in possession. The mortgagor died leaving, besides one brother, two sisters, each having a son—the family remaining undivided. In 1856 one of the sons, with the con-

ted by the Aliyasantana law, yet as the right to the half share purported to be sold in 1857 had no legal existence, nothing could pass by that sale, and the suit should be dismissed. Neither the original mortgagee nor his son could rely on the twelve years' rule of limitation unless he could prove a subsequent valid sale, in the absence of which his possession must be taken to retain its original character. BYARI *v.* PUTTANNA . . . . I. L. R., 14 Mad., 38

42. ——— *Decree against karnavan on tarwad debt before partition—Execution after partition against property of person not party to execution proceedings—Joint decree executed against separate property.*—The karnavan of a Malabar tarwad borrowed money for purposes which rendered the debt binding on the tarwad. The creditor obtained a decree against the karnavan in

He was not joined as a party in the execution proceedings. *Held* that the Court-sale did not bind the plaintiff. *Sankara v. Kelu, I. L. R., 14 Mad., 29,* referred to. KUNHAPPA NAMBIAR *v.* SHRIDEVI KETTILAMMA . . I. L. R., 18 Mad., 451

43. ——— *Decree against*

incurred for purposes binding on the tarwad In 1882 a partition had been come to between the members of the tarwad under which the property in suit had been allotted to the plaintiff. *Held* that the state of things when the debt was contracted must be looked to, and at that time the karnavan was competent to bind all the members of the tarwad. Any subsequent arrangement in the

MALABAR LAW—JOINT FAMILY —*continued.*

44. ——— *Decree against karnavan binding on tarwad—Parties.*—A decree

45. ——— *Karnavan—Effect of decree against karnavan representing the tarwad—Res judicata—Civil Procedure Code (1882), ss. 13 and 30.*—Although the members of a tarwad or family may, in an irregular fashion, be represented by a karnavan of the tarwad in a suit, the decree therein does not raise an absolute estoppel against ... record. *Ittiacha* ... and *Sri Devi* ... *d.*, 79, followed ... NAMBIAR . . . . I. L. R., 17 Mad., 214

46. ——— *Customary law of Mapillas—Multifariousness—Suit by karnavan—Right of suit.*—The plaintiff sued as the karnavan of a Mapilla tarwad to recover lands in the possession of the defendants who were a donee from and the descendants of a previous karnavan and their tenants. It appeared that the alleged previous karnavan had died less than twelve years before the suit was filed, but more than twelve years before the joinder, as a supplemental defendant, of one to whom he had conveyed certain property by way of gift five years before his death. An issue was raised as to whether the rights of the parties were governed by Makkatayam or Marumakkatayam law, and an order of a District Munsif, reciting a petition to which the alleged previous karnavan was a party, was put in evidence to show that he had in a particular instance acted in the capacity of karnavan of a

plaintiff had succeeded to the office of the previous karnavan as alleged, and that the previous karnavan had followed the Marumakkatayam rule, although it was shown that other members of the family had dealt with property, described as self-acquired, under the precepts of Mahomedan law. BYATHAMMA *v.* AVULLA . I. L. R., 15 Mad., 19

47. ——— *Mapillas.*—The karnavan of a tarwad in Malabar sued to recover property acquired by his sister (deceased) and now in the occupation of the defendants, her children. The parties were Mapillas. The defendants pleaded (1) that the property had been given to them and their mother jointly; (2) that their mother was not governed by Marumakkatayam law. The Court of first instance found the first-mentioned plea to be

MALABAR LAW—JOINT FAMILY —*continued*

point, remanded the case for the trial of a general issue as to the mode of devolution of self-acquired property in Marumakkatayam Mapilla families in North Malabar, and ultimately it dismissed the suit, ruling that in Marumakkatayam Mapilla families the self-acquired property of a female descends to her children, and does not lapse on her death to her tarwad. *Quære* —Whether that decision was a correct one. Observations as to the law applicable to Mapillas. ILLIKKA PAKRAMAR *v.* KUTTI KUNHAMED

[I. L. R., 17 Mad., 69

48. ———— Removal of karnavan from office—*Ground for removal.*—When a karnavan was found to have made perpetual grants of certain lands belonging to his tarwad for other than family purposes, and to have made demises of certain other lands belonging to his tarwad for unusual periods on no justifiable ground,—*Held* that this did not constitute [illegible]

ERAVANNI REVIVARMAN *v.* ITTAPU REVIVARMAN

[I. L. R., 1 Mad., 153

49. ———— *Grounds for removal—Tarwad property—Powers of karnavan* [illegible]

50. ———— *Suit to remove a karnavan for mismanagement as de facto karnavan.* [illegible]

51. ———— *Karnavan, disqualification for the office of—Blindness.*—Suit to remove the defendant from the office of karnavan of a Malabar tarwad. The defendant had become blind

MALABAR LAW—JOINT FAMILY —*concluded.*

after occupying the office of karnavan for some years. *Held* that the defendant was not a fit person to be the karnavan of a tarwad, and should be removed from his office. KANARAN *v.* KUNJAN

[I. L. R., 12 Mad., 307

52. ———— *Karnavan, disqualification for office of—Blindness.*—A [illegible] sued, as the karnavan of a Malabar tarwad, to recover certain land. One of the defendants, who claimed, but was not admitted, to be a member of the tarwad, and who asserted a right as karnavan to the land in question, pleaded that the plaintiff was not competent to act as karnavan, or consequently to maintain the [illegible] raise this plea. UKKANDAN *v.* KUNHI [illegible]

[I. L. R., 16 Mad., 462

MALABAR LAW—MAINTENANCE.

1. ———— Right to maintenance—*Anandravan.*—*Semble*—An anandravan's right to maintenance is merely a right to be maintained in the family-house. KUNIGARATH *v.* ARANGADEN [illegible]

2. ———— [illegible] Though the general rule [illegible] have separate maintenance [illegible] to that rule. [illegible]

3. ———— *Misbehaviour.*—A [illegible] tarwad (family) is [illegible] dravan (junior member) [illegible] come of the family [illegible] behaviour or [illegible] perty of his own [illegible] PUTANVITIL RE[illegible]

4. ———— [illegible] *claimed by anandravan* [illegible] *against karnavan* [illegible] *neglected to* [illegible] brought by an a[illegible] in the family [illegible] karnavan, who [illegible] elsewhere, and [illegible] *Held* that the [illegible] suit. *Kunhunni* [illegible] *7 Mad., 2*[illegible]

5. ———— *tarwad* [illegible] member of a [illegible] house [illegible] monthly [illegible] karnavan [illegible] her maintenance [illegible] ALI [illegible]

MALABAR LAW—MAINTENANCE —*concluded.*

6. ———————— *Karnavan—Practice of allowing karnavan half the net income disapproved.*—In suits for maintenance against the karanavan of a Malabar tarwad, the practice of awarding one moiety of the net income of the tarwad to the karnavan is not authorized by law. NARAYANI *v.* GOVINDA . . I. L. R., 7 Mad., 352

7. ———— *Member of tarwad with private means*—The fact that a member of a Malabar tarwad has private means does not affect his right to subsistence where the income of the tarwad is sufficient to provide for all a suitable subsistence, but when the income is insufficient for this purpose, the karnavan must take into consideration the private means of each member. *Putanvitil Teyan Nair v. Putanvitil Ragavan Nair, I. L. R., 4 Mad., 171,* distinguished THAYU KUNJIAMA *v.* SHUNGUNNI VALIA KYMAL . . . I. L. R., 5 Mad., 71

8 ———— *Member of tarwad—Taverai.*—A member of a tarwad divided into

. . .

...IL KANDOTHA CHATHU NAMBIAR [I. L. R., 4 Mad., 169

9. ———— *Karnavan, Insufficient maintenance of junior members by—Suit*

. . .

that this arrangement was contrary to his wishes, but pleaded that he provided for them adequately. *Held* that the plaintiffs were entitled to a decree for a

. . .

10. ———— *Maintenance of families of male members by tarwad.*—In North Malabar the male members of a Nayar tarwad are by custom entitled to receive from the karnavan an allowance for the maintenance of their consorts and children while living in the tarwad house. VARIKARA VADAKA VITTIL VALIA PARVATTHI *v.* VARIKARA VADAKA VITTIL KAMARAN NAYAR [I. L. R., 6 Mad., 341

11. ———— *Mapillas—Separate maintenance—Marriage*—The junior male members of a Mapilla tarwad governed by the Marumakkatayam law are entitled to maintenance from the tarwad when living in the houses of their consorts and also to a higher rate of maintenance . . . ...en living as . . . BAPPAN *v.*

. . . [I. L. R., 6 Mad., 259

MALABAR LAW—MORTGAGE.

1. ———— Kanam mortgage.—The question whether a kanam is to be regarded as a lease or a mortgage depends upon the object for which the tenure was created. Where a kanam is granted as a security for the repayment of money advanced to the

. . .

2. ———— *Failure to give possession—Right of suit for money advanced on it.*—When the demisor of land under a kanam agreement is unable to give possession, the demisee may repudiate the contract and recover the amount advanced VAYALIL PUDIA MADATHEMMIL MOIDIN KUTTIAYISSA *v.* UDAYA VARMAVALIA RAJAH [2 Mad., 315

3. ———— *Suit for redemption—Express agreement*—Although the right to hold for twelve years is inherent in every kanam according to the custom of the country, it is competent to the jenmi to exclude this right by express agreement. SHEKHARA PANIKER *v.* RARU NAYAR [I. L. R., 2 Mad., 193

4. ———— *Right to hold for twelve years.*—A kanam holder who denies his jenmi's title forfeits his right to hold for twelve years. RAMEN NAYAR *v.* KANDAPUNI NAYAR [1 Mad., 445

5. ———— *Right to hold for twelve years.*—A kanamdar's right to hold for twelve years depends on his acting conformably to usage and the jenmi's interest, and is lost if he repudiates the jenmi's title. It makes no difference when this is first done in his answer. MAYAVANJARI CHUMAREN *v.* NIMINI MAYURAN . 2 Mad., 109

6. ———— *Right of redemption—Denial of jenmi's title*—Where a first kanam-holder, in his answer to a redemption suit by a second kanam-holder, for the first time denied his own ... jenman right—

. . .

denial and allegation were false, and though ...is documents in support of such allegation were forged PAIDAL KIDAVU *v.* PARAKAL IMBICHUNI KIDAVU [1 Mad., 13

7. ———— *Rights under a kanam—Denial of jenmi right by kanamdar—Adverse possession—Limitation—Declaration of* ... to B in

. . .

MALABAR LAW—MORTGAGE
—continued.

the escheat, in the position of a manager for mortgagees, that the escheat proceedings of which the mortgagor had no notice did not affect his rights; that denial by the mortgagee in possession of the mortgagor's right to redeem is not sufficient to convert such possession into adverse possession. MUSSAD v. COLLECTOR OF MALABAR

[I. L. R., 10 Mad., 189

8. ——— *Right of a jenmi, who is a judgment-creditor, to sell the kanam right before the expiry of twelve years.*—A jenmi, who has obtained a decree for arrears of rent, may sell the kanam before the expiry of twelve years, such a sale does not put an end to the kanam, but only transfers the kanamdar's interest to the purchaser at the execution sale. ACHUTAN NAYAR v. KESHAVAN

[I. L. R., 17 Mad., 271

9. ——— *Malabar kanam—Redemption, Value of improvements on—Depreciation of, between decree and date of redemption.*—A decree for the redemption of a kanam in Malabar was passed in December 1894, when there were on the land improvements in the form of trees, etc., to the value of R1,129. Within the six months limited by the decree for redemption the mortgagor applied for execution, and it appeared that the value of improvements had diminished by the loss of trees to the value of R157. The loss was the result of want of water, and was not attributable to neglect on the part of the mortgagee. *Held* that the loss should fall on the mortgagee. KRISHNA PATTER v. SRINIVASA PATTER . I. L. R., 20 Mad., 124

10 ——— *Transfer of interest—Appointment of a creditor as agent to collect rents and appropriate part towards the debt—Mortgagee in possession—Usufructuary mortgage.*—In a suit to redeem a kanam on certain land, the jenm of a devaswam in Malabar, it appeared that the plaintiff held a mel kanam in respect of the same land executed to him (subsequently to the date of the kanam sought to be redeemed) by defendant No. 3, the samudayam of the devaswam. Defendant No. 3 represented one

[I. L. R., 11 Mad., 301

11. ——— *Limitation—Creditor of a devaswam placed in possession as samu-*

MALABAR LAW—MORTGAGE
—continued.

brought a previous suit against the defendant for an account of the rents received by him and for an injunction: that suit was dismissed on second appeal when the High Court described the defendant as a mortgagee in possession, but the question whether or not he was a mortgagee with or without possession was not then directly and substantially in issue. *Held* that the Court having held, following *Krishnan v. Veloo, I. L. R., 14 Mad., 301*, that the defendant was not a mortgagee in possession under the instrument of 1741, the suit was not barred by limitation. RAMAN v. SHATHANATHAN

[I. L. R., 14 Mad., 312

12 ——— *Right of tenure.*—A kanam mortgagee does not forfeit his right to hold for twelve years from the date of the kanam by allowing the porapad to fall into arrear. RAUTAN v. KADANGOT SHUPAN . . . 1 Mad., 112

See also KUNJU VELAN v. MANAVIKRAMA ZAMORIN KRISHNA MANNADI v. SHANKARA MANAVAN

[1 Mad., 113 note

13. ——— *Ejectment before expiration of time.*—A mel-kanamdar cannot eject a kanamdar or his assignee before the expiration of twelve years from the date of the kanam. PRAMATAN TUPEN NAMBUDRIPAD v. MADATIL RAMEN

[1 Mad., 296

14. ——— *Right to redeem, and make further advances.*—The holder of a mel-

BUDRI . . . I. L. R., 6 Mad., 140

NAMBUDRIPAD . . I. L. R., 4 Mad., 237

16 ——— *Redemption of kanam—Amount to be ascertained before decree—Value of improvements to be ascertained before decree—Jenmi—Right to deduct arrears of rent due from sum payable.*—When a decree is passed for recovery of land demised on kanam on payment of the amount received as renewal fee, the amount must be

MALABAR LAW—MORTGAGE—*continued.*

ascertained at the trial and inserted in the decree. On taking an account between the jenmi (mortgagor) and kanam holder (mortgagee), the former, on redemption, has by custom a right to deduct all arrears of rent due to him from the sum which he has to pay to the latter, before recovering possession of the land. KANNA PISHARODI v. KOMBI ACHEN [I. L. R., 8 Mad., 381

17. ——— *Right to set off arrears of rent against claim for improvements—Mortgage of right of kanamdar, how affected.*—A Malabar jenmi (mortgagor) being entitled, on redemption of the land, to set off a claim for arrears of rent due to him by the kanam-holder (mortgagee) against the claim of the latter for compensation for improvements, a pledge of his rights to a third party by the kanam-holder will not prejudice the right of the jenmi to set off his claim for arrears of rent against the sum found due to the kanam holder for improvements. ACHUTA v. KALI [I. L. R., 7 Mad., 545

See GRESSA MENON v. SHAMA PATTER [I. L. R., 21 Mad., 138

18. ——— *Time for redemp-*

before the customary twelve years' term has expired, but must be construed as referring to a period subsequent to the term of twelve years. KANARA v. GOVINDAN . . . I. L. R., 5 Mad., 310

19. ——— *Kanam—Construction of redemption clause—Time for redemption.*—The primary intention that a kanam is to be redeemed only after 12 years can be negatived either expressly or by implication by a special clause *Puthenpurayil*

20. ——— *Redemption suit*

years, and the suit was therefore premature. MAHOMED v. ALI KOYA . . . I. L. R., 14 Mad., 76

21. ——— *Improvements—Trees of spontaneous growth—Redemption suit—Costs of ascertaining value of improvements.*—According to Malabar custom, kanams (mortgages) must, on the expiry of the term, either be discharged

MALABAR LAW—MORTGAGE—*continued.*

or renewed. On redemption of a kanam, the kanam-holder (mortgagee) is not entitled to claim under the head of improvements the value of trees of

22 ——— *Redemption on terms of admitted demise—Improvements—Local custom—Jenmi's right to a moiety—Arrears of rent—Jenmi's right to deduct from amount*

The right of a jenmi to deduct arrears of rent from the amount payable by him on redemption of a kanam, being a customary incident of the tenure, is not affected by the three years' period of limitation for recovery of arrears of rent UNNIAN v. RAMA [I. L. R., 8 Mad., 415

23. ——— *Transfer of Property Act (IV of 1882), s. 60—Partial redemption—Indivisibility of mortgage.*—The karnavan ... title to

tioned land. In a suit brought ... of rent.—

PANIKAR v. KARUNAKARA I. L. R., 18 Mad., ...

24. ——— Kanam and otti tenures—*Time for redemption—Per curiam*—It is settled law that in the case of kanam and otti mortgages it is not competent to the mortgagors to redeem before the arrival of the appointed time. *Per* INNES, J., dissenting from *Mashook Ameen Suzzada* v. *Marem Reddy*, 8 *Mad*, 31, if in the case of any mortgage the period for redemption is postponed to a fixed date

MALABAR LAW—MORTGAGE—*continued.*

by a special agreement, effect should be given to such agreement. KESHAVA v. KESHAVA
[I. L. R., 2 Mad., 45

25. ——— *Prior right of tenant to make further advances—Right to redeem.*—The prior right of an ottidar to make further advances is established by authorities, but there is no authority to support a kanamdar's claim to a similar privilege. An ottidar may redeem a prior kanam. KUNHAMU v. KESHAVAN NAMBUDRI
[I. L. R., 3 Mad., 246

26. ——— Otti mortgage—*Denial of title—Forfeiture of right.*—An otti-holder, like a kanamdar, forfeits his right to hold for twelve years by denying the jenmi's title. KELLU ERADI v. PRAYALLI . . . 2 Mad., 161

27. ——— *Redemption of mortgage.* An otti like a kanam mortgage, cannot be redeemed before the lapse of twelve years from its date. EDATHIL ITTI v. KORATHON NAYAR
[1 Mad., 122

KUMINI AMA v. PARKAM KOLTSHERI
[1 Mad., 261

28. ——— *Distinction between otti and kanam mortgage.*—An otti differs from a kanam mortgage, first, in respect of the right of pre-emption which the otti-holder possesses; secondly, in being of so large a sum that practically the jenmi's right is merely to receive a peppercorn rent. KUMINI AMA v. PARKAM KOLTSHERI
[1 Mad., 261

29 ——— *Right of jenmi—Right of a second mortgagee*—During the continuance of a first otti mortgage, the jenmi is in the same position as regards his right to make a second otti mortgage to a stranger after, as he was before, the lapse of twelve years from the date of the first mortgage. Where a jenmi made an otti mortgage, [illegible]

notice to the otti-holder, nor given her the option of

30 ——— *Kaividu otti tenure.*—According to Malabar law, land demised on the tenure called kaividu otti is redeemable. KUNDU v. IMPICHI . . . I. L. R., 7 Mad., 442

31. ——— *Right to make further advance—Second mortgage to stranger without notice to otti-holder invalid.*—R, having [illegible]

making the further advance made by *A*, *A* had no claim against the land. AMBU v. RAMAN
[I. L. R., 9 Mad., 371

32. ——— *Forfeiture of right of pre-emption.*—An otti-holder does not [illegible]

of pre-emption without previous offer to him. KANNOTH TULUVAN PARAMBAN KUNHALI v. VANNATHAN VITTIL KINATHE I. L. R., 3 Mad., 74

33. ——— *Sale of jenmi's rights at Court-sale.*—An otti mortgagee, if he avails himself of his right of pre-emption, must pay whatever sum is *bonâ fide* offered to the jenmi for his equity of redemption, but the otti-holder is entitled to be fully informed as to the circumstances and [illegible]

34 ——— *Right of pre-emption—Further charge created by jenmi—Auction-sale of jenmi's rights subject to further charge—Cause of action—Remedy of veppu-holder.*— [illegible]

VAN . . . . I. L. R., 7 Mad., 300

35. ——— *Right of pre-emption under otti—Waiver—Limitation Act (XV of 1877), s. 28.*—A jenmi, having demised [illegible]

36. ——— *Ottidar's right of pre-emption—Suit to redeem kanam.*—In a suit

MALABAR LAW—MORTGAGE —*concluded.*

to redeem a kanam of 1874, it was found that the plaintiff's predecessor in title had purchased the jenm title to the land in question at a sale held in execution of a decree which was binding on the jenmi's tarwad, but it appeared that the defendant (the kanamdar) held an otti on the land, dated 1870, and had not waived his right of pre emption as ottidar. A decree was passed providing for payment by the defendant of the purchase money to the plaintiff, and the execution by the latter of a conveyance and in default for redemption by the plaintiff on his paying to defendant the amount of the otti. *Held* that the decree was right. UKKU *v.* KUTTI

[I. L. R., 15 Mad., 401

37. ———— *Ottidar's right of pre-emption—Waiver—Election not to purchase.* —An ottidar in Malabar loses his right of pre-emption if he refuses to bid at a Court-sale of the land comprised in his otti held in execution of a decree against the karnavan and senior anandravan of the tarwad in which the jenm right is vested, after having been specially invited to attend and exercise that right, and makes no offer to take the property for a long time after the Court sale. AMMOTTI HAJI *v.* KUNHAYEN KUTTI

[I. L. R., 15 Mad., 480

38. ———— Peruarthum mortgage—*Local law of Malabar—Redemption.*—In the case of a mortgage of the kind prevailing in a certain part of Malabar called a "peruarthum" mortgage, when the mortgagor redeems, the mortgagee is entitled

MALABAR LAW—PARTITION.

See MALABAR LAW—JOINT FAMILY.
[I. L. R., 18 Mad., 451, 452 note

1. ———— Compulsory partition—*Makkatayam rule of inheritance—Tiyans' custom.*—The ordinary rule of Marumakkatayam against compulsory partition is equally applicable to Tiyans who follow Makkatayam, no custom to the contrary having been made out. RAMAN MENON *v.* CHATHUNNI . . . . I. L. R., 17 Mad., 184

2.— ——— Iluvans of Palghat—*Custom relating to partibility of property—Tiyans.*—In a suit for partition amongst parties belonging to the

MALABAR LAW—PARTITION —*concluded.*

enforced as a matter of right amongst the Iluvans the Courts were entitled to find the custom relating to partibility among the Iluvans proved. VELU *v.* CHAMU . . . I. L. R., 22 Mad., 297

MALABAR LAW—WILL.

1. ———— Testamentary dispositions of tarwad property by last surviving member of tarwad valid.—The last surviving member of a Malabar tarwad can make a valid testamentary disposition of the tarwad property. ALAMI *v.* KOMU. SECRETARY OF STATE FOR INDIA *v.* KOMU

[I. L. R., 12 Mad., 126

2. ———— Will by member of Malabar tarwad—*Validity of will.*—*Quære*—Whether the principle laid down in *Alami v. Komu, I. L. R., 12 Mad., 126*, would apply in the case of a will made by a member of a Malabar tarwad having heirs in the tarwad. KUTTYASSAN *v.* MAYAN

[I. L. R., 14 Mad., 495

3. ———— Power of disposition by will

NAYAR *v.* CHERIOTTI NAYAR I. L. R., 22 Mad.,

MALICE.

See ARREST—CIVIL ARREST.
[I. L. R., 4 Calc., 583
1 N. W., Pt. II, p 32: Ed. 1873, 91

See CHAMPERTY . I. L. R., 2 Calc., 233
[L. R., 4 I. A., 33
13 B. L. R., 530

See PRIVILEGED COMMUNICATION
[I. L. R., 12 Mad., 374

See WRONGFUL CONFINEMENT.
[I. L. R., 13 Bom., 376

1. ———— Proof of malice—*Suit for*

MALICE—*concluded.*

necessarily malicious. From proof of the absence of such cause as would influence a man of ordinary caution malice may be presumed, but this is an inference which it is optional with the Court, and not compulsory on it, to draw, and it may be rebutted by proof of good faith. When the persons against whom malice is to be proved are not themselves present, but act through agents at a distance, the inference of malice should not be drawn from the mere proof of the absence of reasonable cause. GOTTIEE *v.* ROBERT 2 N. W., 353

2. — — Suit for damages for malicious attachment—*Reasonable and probable cause.*—In an action for damages for a malicious attachment it must be shown that the defendant has acted with malice as well as without reasonable and probable cause. The circumstances that the facts stated in an application for attachment were true, and that nothing was concealed which the Court ought to have known, is evidence that the applicant has reasonable cause upon those facts for the application. CHOUDHARNE SHEORAJ SINGH *v.* DWARKA DOSS . . . . . . 4 N. W., 42

MALICIOUS PROSECUTION.

See ABATEMENT OF SUIT—SUITS.
[I. L. R., 13 Bom., 677

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.
[I. L. R., 25 Bom., 332
4 C. W. N., 781

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—MALICIOUS PROSECUTION . . 6 B. L. R., 141

See MADRAS LOCAL BOARDS ACT, s. 128.
[I. L. R., 13 Mad., 442

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—DAMAGES.
[2 Mad., 254
I. L. R., 14 Bom., 100

See SUBORDINATE JUDGE, JURISDICTION OF . . I. L. R., 11 Bom., 370
[I. L. R., 12 Bom., 358

1. ———— Right to sue—*Previous criminal prosecutions—Offence under s. 211, Penal Code—Compounding offence.*—A criminal prosecution for an offence under s 211, Penal Code (false

MALICIOUS PROSECUTION—*continued.*

2. — — — — *Reasonable and probable cause—Effect of order of discharge of a person accused of an offence before a Magistrate—Presidency Magistrates' Act, IV of 1877, s. 87.*—

prosecution as entitles the accused to maintain an action for malicious prosecution. VENU *v.* COORYA NARAYAN . . . I. L. R. 6 Bom., 376

3. ———— *Liability for mere bonâ fide criminal prosecution.*—A complainant who puts the criminal law in motion against a person by whom he had been aggrieved, such prosecution not being malicious or groundless, should not be held civilly responsible for any injury or loss thereby sustained by the person prosecuted. KISHOREE LALL *v.* ENAETH HOSSEIN KHAN. ENAETH HOSSEIN KHAN *v.* KISHOREE LALL
[1 N. W., Pt. II, p. 11: Ed 1873, 71

4. ———— *Application for sanction to prosecute—Criminal Procedure Code, s. 195—Cause of action.*—*Held* that an unsuccessful application under s. 195 of the Criminal Procedure Code for sanction to prosecute for offences under the Penal Code, in which the only loss or inquiry

in a suit for recovery of damages on account of malicious prosecution. EZID BAKHSH *v.* HARSUKH RAI . . . . I. L. R., 9 All., 59

5. Necessary evidence—*Reason-*

the proceedings in the Criminal Court are not evidence in the Civil Court. AGHORENATH ROY *v.* RADHIKA PERSHAD BOSE . . 14 W. R., 339

6. ———— *Reasonable and*

MUGNEERAM CHOWDHRY
[11 B. L. R., P. C., 321: 17 W. R., 283

Affirming decision of lower Court in MOONEERAM CHOWDHRY *v.* GUNESH DUTT SINGH 5 W. R., 134

7. ———— *Requisites for action for malicious prosecution.*—To sustain an action for malicious prosecution, the prosecution must be proved to have been malicious and without reasonable or probable cause. SVAMI NAYAUDU *v.* SUBRAMANIA MUDALI . . . . . 2 Mad., 158

MALICIOUS PROSECUTION—*continued.*

8. ——— *Proof of malice or want of reasonable cause—Costs.*—*Held* that, there being no proof that the defendant acted maliciously or without probable cause, the suit was not maintainable; and under the circumstances the defendant was entitled to his costs. DUNNE *v.* LEGGE [1 Agra, 33

9. ——— *Omission to allege malice and want of reasonable and probable cause.*—Where a plaint alleges the cause of action to be the prosecution of a false charge of forgery, and the statement of the subject-matter imports that the charge was false to the knowledge of the defendant, the omission to allege expressly malice and the absence of reasonable and probable cause is no good ground of objection to the hearing of the suit. RAMASAMI AYYAN *v.* RAMU MUPAN 3 Mad., 372

10. ——— *Malice—Want of reasonable and probable cause.*—An action for damages for malicious prosecution can succeed only if the plaintiff shows both malice and the absence of reasonable and probable cause. MOONEE UMMAH *v.* MUNICIPAL COMMISSIONERS FOR THE TOWN OF MADRAS . . . . . 8 Mad., 151

11. Onus probandi—*Proof of* [illegible]

can be called upon to show that he acted *bona fide* and upon reasonable grounds, believing that the charge which he instituted was a valid one. GAUR HARI DAS ADHIKARI *v.* HAYAGRIB DAS [6 B. L. R., 371

S. C. GOUR HUREE DOSS *v.* HYAGREB DOSS [14 W. R., 425

NOWCOUREE CHUNDER SURMAH *v.* BIRMOMOYEE DABEA . . . . 3 W. R., 169

12. ——— *Action for damages.*—In an action for damages for malicious prose[illegible]

the defendant Malice is not to be inferred merely from the acquittal of the plaintiff. ROSHAN SIRKAR *v.* NABIN CHANDRA GHATAK [6 B. L. R., 377 note: 12 W. R., 402

13. ——— *Proof of reasonable and probable cause.*—But if the charge were [illegible]

relating [illegible] [6 B. L. R., 375 note

that the [illegible] BISHONATH RUKHIT *v.* RAM DHONE SIRCAR

the Hurans [illegible] [11 W. R., 42

Hurans and t[illegible]

class. Upon th[illegible] ——— *Proof of want of*

be former class [illegible]*le—Inference of malice.*—In a suit

separate from [illegible]secution, the plaintiff is entitled

and bound to show that the prosecution was malicious and without reasonable and probable cause; and if want of reasonable and probable cause be shown, malice may generally be inferred. VENGAMA NAIKAR *v.* RAGHAVA CHARY . 2 Mad., 291

15. ——— *Want of reasonable cause—Inference of malice.*—In a suit for damages on the ground that the defendant made a false charge of defamation against the plaintiff and had him arrested and taken before the Magistrate, who dismissed the charge,—*Held* that the essence of the case lay in the question whether or not the complainant had reasonable ground for complaining before the Magistrate that the plaintiff had defamed him. Malice would be inferred from the absence of reasonable cause. GUNGA PERSHAD *v.* RAMPHAL SAHOO . . . . . 20 W. R., 177

16. ——— *Suit against person whose name was not on record of prosecution case—Absence of reasonable and probable cause—Inference of malice.*—A suit for damages for malicious prosecution will lie against a person who was the real prosecutor in the previous case, although his name did not appear on the record. Ordinarily the absence of a reasonable and probable cause in instituting a proceeding which terminates in favour of the plaintiff would give rise to the inference of malice. RAI JUNG BAHADUR *v.* RAI GUDAR SAHOY [1 C. W. N., 537

17. ——— *Acquittal, Effect* [illegible]—In a suit for dam[illegible] proved [illegible]tability, [illegible] and that [illegible], but acquitted by the Sessions Judge,—*Held* that the mere fact of acquittal did not prove that the charge was malicious; that property having been found in plaintiff's house which defendant claimed as his stolen property, plaintiff could not recover damages, unless it was certain that the property in question was not stolen, but his own; and that it was for plaintiff to show that there was no ground or reasonable cause for bringing the charge. DOONGHUSSEE BIBEE *v.* GIRDHAREE MULL DOOGUR . . . 10 W. R., 439

18. ——— *Effect of acquittal of plaintiff in Criminal Court—Evidence of malice—Reasonable and probable cause.*—The mere fact that a person has been found innocent of the charge made against him is not sufficient to entitle him to a decree in a suit for malicious prosecution. He must further prove that the defendants acted maliciously, that is, from some indirect motive and that there was no reasonable or probable cause for their action. MODY *v.* QUEEN INSURANCE CO. [I. L. R., 25 Bom., 332
4 C. W. N., 781

19. ——— *Absence of probable cause—Malice, Proof of—Burden of proof.*—In a suit for damages for malicious prosecution it was found that the charge brought by the defendant against the plaintiff was unfounded, and that it was

MALICIOUS PROSECUTION—*continued.*

brought without probable cause. *Held* that the absence of probable cause did not imply malice in law, and that, on the failure of the plaintiff to prove that the defendant did not honestly believe in the charge brought by him, the suit should have been dismissed. HALL *v.* VENKATAKRISHNA

[I. L. R., 13 Mad., 394

20. ———————— *Suit for damages for malicious prosecution—Malice—Dishonest motive—Effect of bringing a charge of assault for 'criminal intimidation'—Damages—Reasonable and probable cause—Penal Code (Act XLV of 1860), ss. 351, 352, 503.* Where, in a suit for damages for malicious prosecution on a charge of assault which was dismissed, it appeared from the facts as found by the lower Courts that there was 'criminal intimidation' on the part of the plaintiff, although he was not charged with that offence by the defendant,—*Held* that the plaintiff was not entitled to any damages as no malice or dishonest motive could be imputed to the defendant in bringing the charge of 'assault.' MADHU LAL AHIR GAYAWAL *v.* SAHI PANDE DHAMI . I. L. R., 27 Calc., 532

21. ———————— *Suit for damages for loss of reputation owing to defendant giving false information to police—Malicious prosecution—Defamation—False charge—Want of reasonable and probable cause—Malice—Privilege—Penal Code (Act XLV of 1860), ss. 182, 211, and 499.*—Certain property belonging to the defendant having been stolen, he informed the chief police constable entrusted with the inquiry that he suspected the stolen property to be concealed in plaintiff's house. Accordingly the plaintiff's house was searched, and its floor dug up, and the plaintiff was placed in confinement for an hour or so. No property was, however, found. Thereupon the plaintiff sued the defendant to recover damages for loss of character suffered by him in consequence. Both the lower Courts decreed the plain-

RANADE, *J.*—The present case was governed by the

MALICIOUS PROSECUTION—*continued.*

under s. 182. A person prosecuting another for an offence under the latter section need not prove malice and want of reasonable and probable cause except so far as they are implied in the act of giving information known to the police with the knowledge or likelihood that such information would lead a public

Dutt Singh v. Mugneeram Chowdhry, 11 B. L. R., 321: 19 W. R., 253, distinguished. RAGHAVENDRA *v.* KASHINATHBHAT . I. L. R., 19 Bom., 717

22. ———————— *Prosecution by a police constable in private as well as official capacity—Malice—Suit for damages.*—A police constable, who is in effect the prosecutor and not acting merely in his official capacity, who does not take reasonable care to inform himself of the truth of the case, and who does not honestly believe in the charge preferred by him, and is actuated by an indirect motive in preferring it, is liable in a suit for damages for malicious prosecution. MINAKSHISUNDRUM PILLAI *v.* AYYATHORAI

[I. L. R., 18 Mad., 136

23. ———————— *Procuring wrongful execution of a warrant of arrest—Reasonable and probable cause.*—The plaintiff sued the Municipal Commissioner of Bombay for damages, alleging

a time when its force was spent, and under circum-

premises belonging to him. The work not having

MALICIOUS PROSECUTION—*continued.*

same day (the 24th) a letter signed by the Municipal Commissioner was delivered to the plaintiff, dated the 23rd March, informing him that a "fresh summons" had been issued against him for not complying with the requirements of the notice served on him. The *Courts held that the non appearance of the plaintiff* on the 24th March was not caused by the receipt of this letter On the 24th idem, in consequence of the non-appearance of the plaintiff in obedience to the summons, a warrant of arrest was issued against him. The date originally inserted in the warrant for the plaintiff's appearance before the Magistrate was the 7th April, but this date was subsequently altered to the 2nd June. There was no evidence as to how or by whom this alteration was made. The plaintiff, having heard on the 5th March of the issue of the warrant, appeared next day (the 26th) before the Magistrate and surrendered, showing to the Magistrate the defendant's letter of the 23rd March and explaining why he had not attended on the 24th. A note was made of his surrender, and he was told by the Magistrate to appear on the 7th April. The plaintiff, however, did not get the warrant cancelled. He stated that at the office of the Presidency Magistrate's Court he was informed

to be done He (the plaintiff alleged) told the plaintiff that he need not attend the Police Court that day, as he would get the hearing of the summons postponed for a fortnight The plaintiff then instructed a plumber to do the requisite work, which was

inspector, *H*, who was not called as a witness at the hearing, accompanied by a Police sepoy, went

June the plaintiff again appeared in the Police Court, when the summons was withdrawn The plaintiff claimed R10 000 as damages for malicious prosecution, wrongful arrest, and detention in custody and false imprisonment. The defendant denied that

officer at the latter's request. He further denied that the proceedings were malicious and without reasonable and probable cause The lower Court

The mere circumstance that the plaintiff was pointed out to the police officer who executed the warrant by a Municipal inspector might not of itself amount to taking an active part. But there were special

way, and which could not have been made by the

it was incumbent on the defendant to give rebutting evidence, and more especially to call the Municipal *inspector to explain the circumstances* under which he pointed out the plaintiff to the police officer who executed the warrant. ACWORTH *v* SHAVAKSHA DHUNJIBHAI . I. L. R., 19 Bom., 485

24. ——— Evidence of reasonable and probable cause—*Conviction by Magistrate and acquittal in Sessions Court.*—In a suit to recover

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CHINNA VENKAYYA . . . 3 Mad., 238

25. ——— *Evidence—Conviction of plaintiff by a Criminal Court.*—The fact that the plaintiff in a suit for damages for

L., 28

MALICIOUS PROSECUTION—*continued*

26. ——— *Conviction by Criminal Court.*—In a suit for damages for defamation of character by maliciously bringing a false charge against the plaintiff, it is important in determining the same to see how the charge has been treated by the criminal authorities, and when it was found that the plaintiff had actually been convicted by one Court, that might well be regarded as a weighty circumstance to show that the defendant acted from some adequate cause and not maliciously. GUNGA RAM *v.* HOOLASEE . **2 N. W., 88**

27. ——— *Malice—Negligence, Inference from.*—The defendant had charged the plaintiff with cheating by personation in falsely pretending that his (plaintiff's) wife had been delivered of a son, and procuring a child and passing him off as the son so born. The case was dismissed by the Magistrate, and the plaintiff brought the present suit for malicious prosecution. The defendant alleged reasonable and probable cause and the absence of malice. The Civil Judge awarded R.0 000 damages to the plaintiff. Upon appeal, it was contended that the charge was not malicious, though the facts upon which it was based were allowed to be false. *Held*

acted upon through such negligence that the inference of malice was irresistible. GODAY NARRAIN GAJPATHI RAU *v.* ANKITAM VENKATA NARSING RAU **[6 Mad., 85**

28. ——— *Guilty knowledge—Criminal intention—Proof of malice.*—It is not to be presumed, as a matter of course, from the existence of an overcharge in an account, although the error may be an important error, that the tradesman

and charged as weighing four maunds *D* paid a

MALICIOUS PROSECUTION—*concluded.*

explanation, and without awaiting the result of the investigation by the Small Cause Court Judge which would have satisfied him that there was no sufficient

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the charge in the Magistrate's Court, after the defendant had brought the matter before the Judge of the Small Cause Court and knew it was under the Judge's consideration, and his persistence in the

[6 N. W., 200

29. ——— **Measure of damages**—*Sub*

brought, award substantial damages. ANUNDLOLL DOSS *v.* JOINTEE CHUNDER SEN **[1 Ind. Jur., N. S., 93**

30. ——— **Assessment of damages**—*Fees for counsel.*—In a suit for malicious prosecu-

31. ——— *Fees paid to vakil for defence before Criminal Court.*—In a suit for damages on account of malicious prosecution, the fee paid by the plaintiff to his vakil for the

32. ——— *Costs in Criminal Court.*—In a suit for damages for malicious prosecu-

"MALIK," MEANING OF—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—ESTATES ABSOLUTE OR LIMITED . **I. L. R., 10 Calc., 342**
[I. L. R., 20 Calc., 906
I. L. R., 24 Calc., 406, 834
L. R., 24 I. A., 76
I. L. R., 27 Calc., 44, 649
4 C. W. N., 437

MALIKANA.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS.
[I. L. R., 3 Calc., 414

See DEED—CONSTRUCTION.
[I. L. R., 9 All., 591

See MUNSIF, JURISDICTION OF.
[I. L. R., 19 Calc., 8

See OUDH ESTATES ACT, 1869.
[I. L. R., 4 Calc., 839
L. R., 6 I. A., 1

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—TITLE, QUESTION OF.
[I. L. R., 9 All., 591

——— **Suit for—**

See BENGAL REGULATION VIII OF 1793, s. 46 . . 4 B. L. R., A. C., 29

See LIMITATION ACT, 1877, ART 132.
[4 B. L. R., A. C., 29
2 W. R., 162
6 W. R., 151
7 W. R., 336
9 W. R., 102
12 W. R., 498
13 W. R., 465
19 W. R., 94
21 W. R., 88
22 W. R., 520, 551
I. L. R , 5 Calc , 921

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—DAMAGES
[3 B. L. R., Ap., 96

MAMLATDAR.

See LAND ACQUISITION ACT, 1870, s 19.
[I. L. R., 17 Bom., 299

See CASES UNDER MAMLATDARS' COURTS ACT

See WITNESS—CIVIL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES
[I. L. R., 17 Bom., 299

——— **Court of—**

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE.
[I. L. R., 5 Bom., 137

——— **Disqualification of, to try case.**

See JUDGE—QUALIFICATIONS AND DISQUALIFICATIONS.
[I. L. R., 19 Bom., 608

——— **Order of—**

See BOMBAY LAND REVENUE ACT, V OF 1879, s. 87 . I. L. R., 8 Bom., 188

See HIGH COURT, JURISDICTION OF—BOMBAY—CIVIL . . 9 Bom., 249

MAMLATDAR—*concluded.*

See LIMITATION ACT, 1877, ART. 47.
[10 Bom., 479
I. L. R., 15 Bom., 299
I. L. R., 18 Bom., 348
I. L. R , 20 Bom., 270
I. L. R., 23 Bom., 525

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION . I. L. R., 18 Bom., 348

See POSSESSION—EVIDENCE OF POSSESSION . . I. L. R , 5 Bom., 387

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS.
[I. L. R., 6 Bom., 477
I. L. R., 21 Bom., 91
I. L. R., 24 Bom., 251

MAMLATDAR, JURISDICTION OF—

See LIMITATION ACT, 1877, s 14
[I. L. R., 18 Bom , 734

See CASES UNDER MAMLATDARS' COURTS ACT.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s 622.
[I. L. R , 9 Bom., 97
I. L. R., 18 Bom., 449
I. L. R , 20 Bom., 630
I. L. R., 21 Bom., 731, 775

1. — — Bom. Act V of 1864—*Possession—Right of way.—Held* that an order passed by a Mamlatdar under Act V of 1864 (Bombay), directing the accused to keep open a right of way to a privy, being in reality an injunction to refrain from disturbing the possession of the parties, was therefore within the jurisdiction of the Mamlatdar. REG. *v.* KRISHNASHET BIN NARAYANSHET . . . . . 5 Bom., Cr , 46

[illegible] of Mamlatdar [illegible] their [illegible] *Act* [illegible] *Revenue* [illegible] Mamlatdar [illegible] 1876, to hear and determine a suit brought against officers of Government for acts purporting to have been done by them in their official capacity. A Mamlatdar has no power to inquire into matters not covered by the issues laid down by the Act itself. BALVANTRAO *v.* SPROTT . . . I. L. R , 23 Bom., 761

3. ——— **Effect of order of Mamlatdar as to possession**—*Act XVI of 1838, s. 1, cl. 2—Mamlatdar's Court a Revenue Court within contemplation of Bom Reg. XVII of 1827—Maxim, "Optimus legis interpres consuetudo," —Application of—Remedy when suit to set aside* [illegible] *—Title, suit based* [illegible] pass- [illegible] sued [illegible] the purpose of restraining them from disturbing him in the possession and enjoyment of the lands in dispute. On the 17th January 1864, the Mamlatdar

MAMLATDAR, JURISDICTION OF —*continued.*

made an order to that effect against the said defendants who omitted to sue to set aside that order. In 1868, *B* being then dead, his widow, defendant 2, executed in favour of the plaintiff a mirasipatra in respect of the lands in dispute, which was afterwards [illegible] her adopted son (defendant 3). In 1871 the plaintiff sued to recover possession of the lands. Defendants 1 and 2 contended (*inter alia*) that the lands were their private property and had never been in the possession of *B* or his widow. The suit went up to the High Court, and was remanded for the determination of the issues, viz., (1) whether *B* had at the time of his death such a title to the lands as would have entitled him to make a mirasi lease thereof, and (2) whether there was any valid adoption of defendant 3 by defendant 2. On remand the Court of first instance found on the issues in the affirmative, being of opinion that defendant 3 was in possession at the time the mirasipatra was executed to the plaintiff. The defendants appealed, and the Subordinate Judge confirmed the lower Court's decree. He [illegible]

[illegible] late powers was wrong in treating the Mamlatdar's order as passed under the Mamlatdars' Act. The order was one of a Revenue Court under s. 1, cl. 2, of Act XVI of 1838. It was contended that the Mamlatdar could not make such an order under Act XVI of 1838. *Held* that, although the Collector's Court was the only Revenue Court contemplated by Regulation XVII of 1827, since the passing of Act XVI of 1838, the Mamlatdar's Court was always regarded as a Revenue Court empowered to deal with a claim to possession, and that in construing that Act the maxim "*optimus legis interpres consuetudo*" might be properly applied. The order [illegible]

[illegible] their actual possession might afford them. The Subordinate Judge having found that defendant 3 was in possession in 1860 when she granted the mirasipatra, the appellant could not have acquired any title by possession before the plaintiff's suit in 1871. BAPU KHANDU *v.* BAJI JIVAJI [I. L. R., 14 Bom., 372

4. ———— Parties, Substitution of—*Code* [illegible]

[illegible] two persons in a Mamlatdar's Court, and one of them died pending the suit, and it appeared that the right to sue did not survive to the surviving plaintiff alone,—*Held* that the Mamlatdar, having therefore no jurisdiction to substitute parties, had no alternative but to dismiss the suit. GANPATRAM JESHAL *v.* RANCHHOD HARIBHAI [I. L. R., 17 Bom., 645

5. ———— Superintendence of High Court—*Mamlatdars' Courts Act (Bom. Act III of 1876), ss. 15, cl. (a), sub-cls. (1) and (2), and 18—Execution of decree for possession against a third party.*—A third party cannot be ousted from [illegible]

[illegible] was, strictly speaking, beyond his authority, but that as *N*'s petition to the High Court contained no distinct denial that he was occupying merely on behalf of the defendant, the High Court would not interfere in its extraordinary jurisdiction. NATHEKHA *v.* ABDUL ALLI . . I. L. R., 18 Bom., 440

6 ———— Possessory suit—*Mamlatdars' Courts Act (Bom. Act III of 1876), s. 15—Possession of mortgagee.*—The possession by a mortgagee is not possession on behalf of his mortgagor within the meaning of s. 15 of the Mamlatdars' Act (Bombay Act III of 1876) so as to give the Mamlatdar jurisdiction under that section. KHANDERAO *v.* NARSINGRAO . I. L. R., 19 Bom., 280

7. ———— Possessory suit by landlord—*Mamlatdars' Courts Act (Bom. Act III of* [illegible]

[illegible] Mamlatdars' Court under the provisions of the Mamlatdars' Act (Bombay Act III of 1876). The tenants cannot be said to be in possession "on behalf" of the landlord under s. 15, cl. (*a*), of the Act, and the Mamlatdar has therefore no jurisdiction to try the suit. GOMA *v.* NARSINGRAO . . I. L. R., 20 Bom., 260

See BHIMAJI JAYAJI PATEL *v.* GOPALA MAHADU SALE . . I. L. R., 20 Bom., 264 note

8. ———— Dispossession of a third person not a party in execution of decree for possession—*Possessory suit by third person against decree-holder—Cause of action—Mamlatdars' Courts Act (Bom. Act III of 1876)—Mamlatdar—Civil Procedure Code (1882), s. 332.*—Where in execution of a decree a person not a party to the suit is dispossessed, his dispossession does not give him a cause of action within the

MAMLATDAR, JURISDICTION OF —*continued.*

jurisdiction of the Mamlatdar. S. 332 of the Civil Procedure Code (Act XIV of 1882) applies. RAMCHANDRA SUBRAO *v* RAVJI [I. L. R., 20 Bom., 351

9. ——— **Delivery of possession in execution of a decree of a Civil Court**—*Subsequent lease to the judgment-debtor—Refusal of the Mamlatdar to restore possession after the expiration of the lease—Suit for possession—Cause of action.*—*V* obtained possession of land from *B* in execution of a decree of a Civil Court. After obtaining possession, *V* leased the land to *B*. On *B*'s refusal to vacate the land on the expiration of the lease, *V* brought a possessory suit in the Mamlatdar's Court The Mamlatdar rejected the plaint, holding that he ought not to order restoration of possession of the land again and again. *Held* that a fresh cause of action accrued to *V* on the refusal of *B* to give possession on the expiry of the lease, and that the Mamlatdar was wrong in declining to accept the plaint. VINAYAK VISHWANATH BHOPLE *v* BALU . I. L. R., 20 Bom., 491

10. ——— **Irregular decree of Mamlatdar made by consent of parties**—*Mamlatdars' Courts Act (Bom Act III of 1876)*—The applicant brought two possessory suits against the opponent in the Mamlatdar's Court for the recovery of certain pieces of land By consent decrees were passed in these suits that, unless the [illegible]

to the applicant but had been wrongfully refused by him. He ordered execution to issue as to costs, but declined to make any order as to possession The applicant thereupon applied to the High Court in its extraordinary jurisdiction, and alleged that the money had not been duly tendered. *Held* that the decrees were such as the Mamlatdar could not legally make under the provisions of the Mamlatdars' Courts Act (Bombay Act III of 1876), and the consent of parties could not give him power to do so RAMRAO TATYAJI PATIL *v.* BABAJI DHONJI BIRVE [I. L. R., 20 Bom., 630

11. ——— **Possessory suit against** [illegible]

12 ——— **Dispossession of a third person not a party to suit**—*Remedy of person so dispossessed—Civil Procedure Code (1882), s. 622*—*G* got a decree for possession against *P* in a Mamlatdars' Court In execution the Mamlatdar directed the ouster of *C*, who was in possession and who was not a party to the decree. *Held* that the Mamlatdar's order for the execution of the decree by the ouster of *C* was without jurisdiction, and that it should be set aside under s 622 of the Civil Procedure Code. CHINAYA *v* GANGAVA [I. L. R., 21 Bom., 775

MAMLATDAR, JURISDICTION OF —*concluded.*

13. ——— **Person ousted in execution no party to the decree**—*Suit for possession in Mamlatdar's Court by person ousted*—A person ousted in execution of a decree of the Mamlatdar's Court, to which he was no party, can himself bring a suit for possession in the Mamlatdar's Court against the person by whom he was ousted, and the defendant in such a suit cannot rely on the fact of his having obtained possession in execution of a decree against other parties as a bar to the jurisdiction of the Mamlatdar. NINGAPPA *v* ADIVEPPA [I. L. R., 24 Bom., 397

14. ——— **Remedy as between joint owners put into possession under decree of Civil Court.**—In execution of the decree obtained in 1886 in a Civil Court, the plaintiff and the defendants were put into joint possession of certain land. [illegible]

the defendants to deliver up possession of the land to the plaintiff, together with the trees growing thereon. *Held* that the Mamlatdar had no jurisdiction to pass the decree. The Civil Court had passed a decree giving the parties joint possession of the land, and the Mamlatdar had no jurisdiction to override that decision and to place the plaintiff in exclusive possession By the decree of the Civil Court they were determined to be joint owners, and the remedy in case of unequal possession or taking of produce was a suit for an account or for partition. BHAU *v.* DADE KRISHNAJI BHAGVI I. L. R., 21 Bom., 777

MAMLATDARS' COURTS ACT (BOMBAY ACT V OF 1864).

See EXECUTION OF DECREE—MODE OF EXECUTION—GENERALLY—POWERS OF OFFICERS IN EXECUTION. [5 Bom., A. C., 158

See HIGH COURT, JURISDICTION OF—BOMBAY—CIVIL . . 9 Bom., 249

See JURISDICTION OF REVENUE COURT—BOMBAY REGULATIONS AND ACTS. [I. L. R., 1 Bom., 624

See LIMITATION ACT, 1877, ART. 47. [9 Bom., 424
I. L. R., 5 Bom., 25, 27
10 Bom., 479
I. L. R., 18 Bom., 348

MAMLATDARS' COURTS ACT (BOMBAY ACT V OF 1864)—*concluded.*

See MAMLATDAR, JURISDICTION OF [5 Bom., Cr., 46

See PENAL CODE, s. 188 3 Bom., Cr., 53 [5 Bom., Cr., 21

See RIGHT OF SUIT—COSTS [8 Bom., A. C., 23

MAMLATDARS' COURTS ACT (BOMBAY ACT III OF 1876).

See CASES UNDER MAMLATDAR, JURISDICTION OF

See MINOR—REPRESENTATION OF MINOR IN SUITS I. L. R., 21 Bom., 88 [I. L. R., 24 Bom., 238

See PRACTICE—CIVIL CASES—REFERENCE TO HIGH COURT [I. L. R., 21 Bom., 606

See SPECIFIC RELIEF ACT, s. 9 [I. L. R., 15 Bom., 685

— "**Houses**" "**Premises.**"—The intention of Bombay Act III of 1876, as stated in the preamble, was not to abolish the old Mamlatdars' Courts and create new Courts under the same name, but was to bring into one consolidating and amending Act so much of the old law and such new law as appeared necessary for the continued regulation of the existing Courts. The High Court is therefore not deprived of the powers of superintendence and revision which it exercised over the Mamlatdars' Courts previously to the passing of that Act *Per* PINHEY and F. D. MELVILL, JJ.—Under Bombay Act III of 1876, the Court of a Mamlatdar has, for purposes of the Act, jurisdiction in a town or city situated within the ordinary limits of his talukh. The word "premises" used in s. 4 of the Act includes "houses," and the jurisdiction of the Mamlatdar's Court consequently extends over a house for purposes of the Act It being not denied that the city of Ahmedabad is within the limits of the Daskroi talukh, the jurisdiction of the Court of the Daskroi Mamlatdar extends over a house in the city of Ahmedabad BAI JAMNA *v.* BAI JADAV [I. L. R., 4 Bom., 168

[illegible]

GAPA *v.* DODAPA . [illegible]

MAMLATDARS' COURTS ACT (BOMBAY ACT III OF 1876)—*continued.*

1. ——— s. 4—*Jurisdiction of Mamlatdars' Courts in redemption suits—Construction of statutes*—Under Bombay Act III of 1876, Mamlatdars have no jurisdiction to take cognizance of suits arising out of disputed claims to redeem mortgages SHIDLINGAPA *v.* KARISBASAPA [I. L. R., 11 Bom., 599

[illegible]

allegations were not proved against all the defendants one of the defendants having been found not to have disturbed the plaintiff *Held*, reversing the order of the Mamlatdar, that there was nothing in the Mamlatdars' Act to prevent the Mamlatdar from

[illegible]

3. ——— *Jurisdiction—Disputes* [illegible]

water each can take from a stream. A suit will lie in a Mamlatdar's Court where a person has been dispossessed or deprived of the use, or when he has been *disturbed or obstructed, or when attempt has been* made to disturb or obstruct him in the use of water of which he is in possession or was in possession within six months before suit PADAJI RAMJI *v.* BABAJI DEVJI . . I. L. R., 23 Bom., 47

4. ——— *Jurisdiction of Mamlatdar—Water-course—Riparian owners, Right of.*—The law as to riparian owners is the same in

[illegible]

special custom, he has no right to dam it back, or exhaust it so as to deprive other riparian owners of like use What would constitute an unreasonable diversion of water such as to disturb the use of the lower riparian owners is a question of fact which the Legislature has given a Mamlatdar jurisdiction to decide NARAYAN HARI DEVAL *v.* KESHAV SHIVRAM DEVAL . . I. L. R., 23 Bom., 506

5. ——— cl. 2—*Jurisdiction to* [illegible]

6. ——— *Jurisdiction of Mamlatdar—Removal of earth from field—Profit of*

MAMLATDARS' COURTS ACT (BOMBAY ACT III OF 1876)—*continued.*

land—The removal of earth from a field is a taking of a portion of the substance, not merely of a profit, of the land, and the Mamlatdar has no jurisdiction, under s. 4 of Bombay Act III of 1876, to entertain an application for an injunction to restrain the defendant from obstructing the plaintiff in the exercise of her right to take earth from the defendant's land. FAKI ISMAIL *v.* UMABAI BIVALKAR

[I. L. R., 7 Bom., 425

7. ———— *Injunction—Possession—Constructive possession—Landlord and tenant.*—A landlord who has only a constructive possession of lands through his tenant cannot obtain relief by way of injunction under cl. 2 of s. 4 of the Mamlatdars' Act (Bombay Act III of 1876). *Desai Malabhai Bapubhai* v *Keshavbhai Kuberbhai, I. L. R., 12 Bom., 419,* followed. NEMAVA *v.* DEVANDRAPPA . . I. L. R., 15 Bom., 177

8. ———— *Jurisdiction—Suit for injunction for disturbance of possession—Possession of landlord by tenant—Physical possession—*

bay Act III of 1876) A person who is in possession through his tenant cannot sue for an injunction for disturbance of possession under the Act *Malabhai* v. *Keshavbhai, I. L. R., 12 Bom., 419,* approved and followed. ABA BIN SADOBA *v.* PARVATRAO BIN GANPATRAO . . I. L. R., 18 Bom., 46

1. ———— s. 8—*Amendment of plaint—Mamlatdar's power to order a plan to be appended to the plaint.*—In a possessory suit filed under Bombay Act III of 1876 the Mamlatdar has no power to order the plaintiff to append a plan to the plaint, showing the situation of the property in dispute. If the plaint is defective in its statement of the necessary particulars as to the nature and situation of the property, the amendment contemplated by the Act is an amendment in writing on the face of the plaint. CHENBASAVA *v.* RUDRAPA

[I. L. R., 14 Bom., 581

2. ———— *Suit for possession—Parties—Tenants of defendant—Rejection of plaint for misjoinder of parties—Procedure.*—Defendant No. 1, having obtained a decree against the plaintiffs for possession of certain land in the Mamlatdar's Court, leased the land to defendants Nos. 2 and 3. Shortly afterwards the Mamlatdar's decree was

suit on its merits. The defendant, who had obtained possession under a decree which had been reversed, could not improve his position by letting third parties into possession as his tenants. They stood in the shoes of their lessor and were jointly liable with him to be ousted by proceedings taken in the Mamlatdar's Court. ANTU *v.* VISHNU GOVIND BAWA

[I. L. R., 22 Bom., 630

———— s. 13.

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS.

[I. L. R., 6 Bom., 477
I. L. R., 21 Bom., 91
I. L. R., 24 Bom., 251

been dispossessed of certain land, in execution of a decree obtained by the opponent in the Court of the Mamlatdar of Karad, under cl. (*c*) of s. 15 of the Mamlatdars' Act, III of 1876, to which he (the applicant) was not a party. The applicant thereupon brought the present suit against the opponent to recover possession. The Mamlatdar, relying on a Government circular, dismissed the suit as *res judicata.* The applicant applied to the High Court under its extraordinary jurisdiction. *Held* that the decree made by the Mamlatdar in the former suit, under cl. (*c*) of s. 15 of the Mamlatdars' Courts Act, III of 1876, was no bar to the exercise by him of jurisdiction in the present suit, the present plaintiff (applicant) not having been a party to the former

reversed, and the case directed to be heard. GOVINDA BABAJI *v.* NAIKU JOTI . I. L. R., 10 Bom., 78

2. ———— *Suit for injunction—Person dispossessed in execution of decree—His remedy by suit or application under s. 332 of the Code of Civil Procedure (Act XIV of 1882).*—A person is not entitled to claim relief (by way of

regular suit. GULABBHAI GOPALJI *v.* JINABHAI RATANJI . . . I. L. R., 13 Bom., 213

1. ———— s. 17—*Decree for possession—Obstruction to execution of decree—Power to use force in execution of decree.*—When a Mamlatdar passes a decree for possession, it is his duty, under s. 17 of Bombay Act III of 1876, not merely to issue orders to the village officers to execute the decree, but also to see that effect is really given to his decision. For this purpose he may use force, if necessary, to eject the person against whom the decree is passed. SHANKAR RAMLAL DIKSHIT *v.* MARTANDRAO BHAU TIPNIS . I. L. R., 14 Bom., 157

MAMLATDARS' COURTS ACT (BOMBAY ACT III OF 1876)—*continued.*

2. ———— and s. 4—*Mamlatdar's power to levy costs—Costs of litigation in High*

order, and directed *B* to pay *A's* costs of the application. *A* thereupon applied to the Mamlatdar to levy the costs decreed by the High Court. The Mamlatdar rejected the application for want of jurisdiction *Held* that under s. 17 of Bombay Act III of 1876 the Mamlatdar had the same power to levy costs decreed by the High Court as he had regarding costs decreed in his own Court. The litigation in the High Court was a continuation of the suit in the Mamlatdar's Court, and any costs incurred were subject to the rules laid down in the Act. NEMAYA *v.* DEVANDRAPPA

[I. L. R., 16 Bom., 238

3. ———— *Mamlatdar, Duty and jurisdiction of—Execution of Mamlatdar's decree by Mamlatdar under directions of Collector—*

for the Collector to issue such a direction, which legally could only issue from the High Court, the High Court would not set aside the execution if otherwise valid. S. 17 of the Mamlatdars' Courts Act (III of 1876) is imperative, and leaves to the Mamlatdar no discretion as to the duty of enforcing the decree The Act does not purport to provide detailed rules as to applications for execution, and

interfere. *Held* also that, under s. 17 of the Mamlatdars' Courts Act, a Mamlatdar was not pre-

[I. L. R., 19 Bom., 675

4. ———— and s. 18—*Procedure applicable to such Courts.*—Where a person is dispossessed in execution of a Mamlatdar's decree

Mamlatdars' decrees, cannot be supplemented, as to

MAMLATDARS' COURTS ACT (BOMBAY ACT III OF 1876)—*concluded.*

5. ———— *Mamlatdar's decree, by whom it may be questioned—Reference to High Court by Collector—Practice—Procedure—Right*

———— s. 18—*Right of suit—Suit to set aside Mamlatdar's order.*—No suit will lie to set aside an order validly passed by a Mamlatdar under Bombay Act III of 1876, though such an order may be superseded by a decree of a Civil Court. TULJARAM *v.* BAMANJI KHARSEDJI . I. L. R., 19 Bom., 828

MANAGEMENT OF ESTATE BY COURT.

———— Summary enforcement of contract made by the Court—*Izarah lease—Lessee, Application by a person not a party to a suit.*—A Court has complete power to enforce summarily a

summarily such an order on the application of a lessee, not a party to the suit in which the order completing the agreement for lease had been passed, and at the time when such suit was no longer in existence. SURENDRO KESHUB ROY *v.* DOORGASOONDERY DOSSEE. EX-PARTE SARODAPERSAUD SOOR . I. L. R., 15 Calc., 253

MANAGER.

See ACT XL OF 1858, s. 18.
[I. L. R., 4 Calc., 929

See BANKERS . I. L. R., 16 All., 88

See BENGAL TENANCY ACT, s. 93.
[I. L. R., 22 Calc., 634
I. L. R., 23 Calc., 522
4 C. W. N., 760

———— Application for—

See APPEAL—ACTS—BENGAL TENANCY ACT . I. L. R., 24 Calc., 312

See BENGAL TENANCY A[CT, s.] 93.
[I. L. [R., ..] Calc., 831

See CASES UNDER LUNA[CY]

MANAGER—*concluded.*

——— Appointment of, by Court of Wards.

See Right of Suit—Interest to support Right . . 13 B. L. R., Ap., 14

——— of company.

See Possession, Order of Criminal Court as to—Parties to Proceedings . . I. L. R., 21 Calc., 915 [I. L. R., 25 Calc., 423

——— of endowment.

See Cases under Hindu Law—Endowment

——— of joint family—

See Cases under Hindu Law—Joint Family—Position and Power of Manager.

See Cases under Hindu Law—Joint Family—Powers of Alienation of Members—Manager

See Limitation Act, 1877, s 19 (1871, s. 20)—Acknowledgment of Debts [I. L. R., 1 Mad., 385 I. L. R., 5 Mad., 169 I. L. R., 17 Bom., 512

See Cases under Malabar Law—Joint Family.

——— of railway, Agent of—

See Railways Acts, s. 77. [I. L. R., 24 Calc, 306

MANAGER OF ATTACHED PROPERTY.

See Act XI of 1859, s. 5. [12 B. L. R., 297 L. R., I I. A., 89

See Cases under Receiver.

1. ——— Appointment of manager—*Discretion of Court—Civil Procedure Code, 1882, s. 503 (1859, s. 219)*—It is discretionary with the Court to appoint a manager under this section. Brojender Narain Roy v. Kassessur Roy [1 W. R., Mis., 15

Oottum Singh v. Ram Surun Lall [23 W. R., 287

2. ——— *Consent of decree-holder—Civil Procedure Code, 1859, s. 243.*—A manager may be appointed by the Court under Act VIII of 1859, s. 243, without the consent of the decree-holder. Thakoor Chunder v. Chowdry Chotee Singh . Marsh., 261: 2 Hay, 112

3. ——— *Civil Procedure Code, 1859, s. 243*—In appointing a manager under s. 243, Act VIII of 1859, a Court must exercise a reasonable discretion; and the sole reason for such appointment ought to be that, whilst the debts would be equally satisfied in that manner, and as surely as in any other, the arrangement would at the same time save the debtor from great prospective loss. Zuhoorun v. Nujeeboodden . 11 W. R., 505

MANAGER OF ATTACHED PROPERTY—*continued.*

4. ——— *Lease or mortgage of attached property—Civil Procedure Code, 1859,*

he can satisfy the Court that there is reasonable ground to believe that the amount of the decree will be raised thereby. Luchmeeput Doogur v. Jugut Indur Tewaree . . W. R., 1864, Mis., 5

5. ——— *Civil Procedure Code, 1859, s. 243—Ground for allowing time to pay decree.*—A Judge is not bound, under s. 243,

by that arrangement be put to loss. Ram Ruttun Neogy v. Land Mortgage Bank of India [17 W. R., 193

6. ——— *Ground for allowing time to pay decree—Civil Procedure Code, 1859, s. 243.*—There should be a reasonable probability of the debt being discharged by the profits of the estate within a reasonably short period. Suruy Narain Sahee v. Ram Pershad Misser [21 W. R., 146

7. ——— *Inquiry as to value of property—Rules of High Court, 11th July 1871.*—Where property of a judgment-debtor is already in charge of a manager duly appointed, and it is proposed to put other properties belonging to the debtor also under his charge, an attachment of the property is necessary before appointing the manager to take charge of them. The rule of Court of 11th July 1871 does not limit the time for which a manager should be appointed to two years. The Judge as to that should exercise a proper discretion. Banwari Lal Sahu v. Girdhari Singh [8 B. L. R., Ap., 23: 16 W. R., 275

Ajoodhya Doss v. Doorga Dutt Singh [17 W. R., 101

8. ——— *Time in which debt could be paid off.*—A Court executing a decree was held to have been justified in refusing to appoint a manager for attached property belonging to the judgment-debtor where it would have taken twenty [illegible] of the profits of the pro[illegible] to the [illegible] of [illegible] under [illegible] could [illegible] thereby be cleared off in six months. Mohiner Mohun Doss v. Ram Kant Chowdry [15 W. R., 323

MANAGER OF ATTACHED PROPERTY—*continued.*

9. ——— *Distribution of estate under manager—Priority of creditors.*—After *A*, a judgment-creditor, had attached property of his debtor under the decree, the Court, at the instance of the Collector of the district, ordered that,

under s 270, to some priority over the other creditors. The Court, finding that *A's* debt might be paid out of the proceeds of the estate in two years, and at the same time funds be left for the reduction of the other debts, ordered that it should be so PEAREE DEBEA v BOYDONAUTH BAUGH

[Marsh., 413: 2 Hay, 537

10 ——— *Causing delay in giving satisfaction of decrees*—Numerous decrees had been obtained against the defendants, part of whose property consisted of a village which was

applied to the case of more than a single decree-holder. REDNUM ATCHUTARAMAYYA v. MAHOMED AMIN KHAN *alias* DADA SAHIB . 5 Mad., 272

11. ——— *Power of Court to appoint manager—Decree on specially-registered bond—Registration Act, 1866, s. 55.*—Where the lower Appellate Court passed a decree on a specially-registered bond, setting aside an arrangement made by the first Court as to payment by instalments and its order about interest,—*Held* that s. 55 of the Registration Act applied to the case, and that the High Court was competent, in subsequent execu-

[15 W. R., 477

12. ——— *Ground for rejecting application—Civil Procedure Code, 1859, s. 243.*—The fact of the judgment-debtor's possessing properties other than the one attached, is no

MANAGER OF ATTACHED PROPERTY—*continued.*

ground for rejecting an application under s. 243, Act VIII of 1859, for the appointment of a manager. DEBKUMARI BIBEE v RAM LAL MOOKERJEE

[3 B. L. R., Ap., 107: 12 W. R., 6

13. ——— *Circumstances necessary for proof of necessity for order—Civil Procedure Code, 1859, s. 243.*—Where a judgment-debtor asks that a manager be appointed under Act VIII of 1859, s 243, he must show that the circumstances are such that the order for which he applies would be a reasonable and proper one. He should not only show what is the income of the particular property and the amount due under the decree, but he should also show whether that income is unincumbered, and if incumbered, to what extent. He cannot ask the Court to make an order under this section with respect to one single property before disclosing the whole state of his affairs, the extent of his liabilities, and the means he has of meeting them. DINOBUNDHOO SINGH v. MACNAGHTEN

[2 C. L. R., 185

14. ——— *Civil Procedure Code, 1859, s. 243—Order staying sale of property.*—S. 243 of the Civil Procedure Code does not authorize an order in the execution department having the effect of staying the sale of certain property for one year. FYZ-OOD-DEEN v GIRAUDH SINGH

[2 N. W., 1

15. ——— *Civil Procedure Code, 1859, s. 243—Decree on mortgage.*—S. 243, Act VIII of 1859, does not apply to a decree on a mortgage, when the decree declares that certain property is to be sold in satisfaction of the mortgage-debt A manager therefore cannot be appointed under s. 243 in such a case. WOMDA KHANUM v RAJROOP KOAR

[I. L. R., 3 Calc., 335: 1 C. L. R., 295

16 ——— *Power of Court to order payment out of proceeds of sale.*—The Court has no power to order that the manager should, out of the proceeds of the estate, satisfy the claims of persons other than decree-holders THAKOOR CHUNDER v. CHOWDHRY CHOTEE SINGH

[Marsh., 261: 2 Hay, 112

17. ——— *Civil Procedure Code, 1859, s. 243—Power of Courts in mofussil to appoint manager pending suit or administration.*—*Held per* PHEAR, J., that s. 243, Act VIII of 1859, does not give the Court authority to appoint a

administration. But however this may be, the Court's manager, under such circumstances, only acquires a right to charge his costs and expenditure against the parties to the suit or persons who have knowingly placed themselves in a like position relative to his

MANAGER OF ATTACHED PROPERTY—*continued.*

management, and even then he can only do so in respect of such expenditure as has been expressly sanctioned by the Court. MORAN v. MITTU BIBEE [I. L. R., 2 Calc., 58

18. ———— *Civil Procedure Code, 1859, s 243—Effect on attachment of appointing manager.*—An estate does not cease to be under attachment merely by the appointment of a manager under s 243, Act VIII of 1859. MOHABEER PERSHAD SINGH v. COLLECTOR OF TIRHOOT . 13 W. R., 423

19. ———— *Power of Court to deal with property under manager.*—The fact of a manager having been appointed to realize the profits of a property with a view to satisfy certain decrees (even though the appointment should have been confirmed by the High Court) is no bar to a Judge, on the application of another decree-holder, inquiring into the state of the property, and passing proper orders, and, should he find that the proceeds are insufficient to satisfy all the decrees within a reasonable time, causing the decree to be executed in the usual way. DIN DYAL LALL v. RAM RUTTUN NEOGHEE . . . . . 16 W. R., 46

20. ———— *Power of man-*

the judgment debtor, and not properly as an officer of Court. IN THE MATTER OF THE PETITION OF TEIL & Co. TEIL & Co v. ABDOOL HYE 19 W. R., 37

21. ———— *Power of manager under Act VIII of 1859, s 243—Notice of enhancement—Civil Procedure Code (Act X of 1877), s. 503.*

been doing and he has no power to issue notice of enhancement. KHETTER MOHUN DUTT v. WELLS [I. L. R., 8 Calc., 710: 11 C. L. R., 13

22. ———— Removal of manager—*Omission to file accounts*—Where a manager had not

KERJEE v. JOGENDRO COOMAR MOOKERJEE [22 W. R., 220

23. ———— *Summary removal*

MANAGER OF ATTACHED PROPERTY—*concluded.*

[19 W. R., 66

24. ———— Death of manager—*Discretion of Courts as to renewing managership.*—Where

directed execution to proceed against the estate,—*Held* that his discretion had been properly exercised. DOORGA DUTT SINGH v. BUNWAREE LALL SAHOO [25 W. R., 33

MANDAMUS.

See CALCUTTA MUNICIPAL ACT, 1863, s. 151. [8 B. L. R., 433

See RULES OF HIGH COURT, CALCUTTA. [8 B. L. R., 433

———— Order absolute for—

See LETTERS PATENT, HIGH COURT, CL. 15. [8 B. L. R., 433

———— Power of High Court to issue—

See TRANSFER OF CRIMINAL CASE—GENERAL CASES . I. L. R., 2 Calc., 278

1. ———— Ground for issue of writ—*Criminal charge in respect of civil suit pending—Duty of Magistrate.*—A mandamus will not issue to compel a Magistrate to proceed with a criminal charge in respect of any matter involved in, or affecting the merits of, a civil suit still pending. The proper course for a Magistrate to pursue in such a case is not to dismiss the summons, but to adjourn the hearing pending the decision of the Court in the civil action. QUEEN v. CLARKE [1 Ind. Jur., O. S., 137

2. ———— *Discretion of Magistrate to refuse to proceed with criminal charge pending civil suit.*—Where a Magistrate ... refused to pro-

[illegible] I Mad., [illegible]

3. ———— *Magistrate finding evidence does not amount to offence charged—Error of law.*—A charge was made against the accused of using criminal force under s. 141 of the Penal Code. The Police Magistrate heard the evidence for the prosecution, and, without disbelieving it, decided it did not amount to the offence charged. *Held* that, assuming that an error of law had been committed, the High Court had no power to issue a mandamus to the Magistrate to commit the accused. It was not a case where the Magistrate had

MANDAMUS—*continued.*

declined jurisdiction. he had exercised his jurisdiction and heard the case. EMPRESS v. GASPER [I. L. R., 2 Calc., 278

4. —— —— —— *Beng. Act VI of 1863, s. 180—Duties of Justices of Peace for Town of Calcutta—Supplying tanks for water.*—Under s. 18 of Bengal Act VI of 1863, the Justices of the Peace are required to keep up and maintain the existing tanks, reservoirs, etc, vested in them; or to substitute a new tank, reservoir, etc, for any existing tank, reservoir, etc., i.e., new works of a like kind,

TOWN OF CALCUTTA . 2 Ind. Jur., N. S., 182

5. —— *Matter concerning revenue—License to sell liquor—Jurisdiction of High Court—Act XI of 1849, s. 9—Beng. Act III of 1873, s 1—21 Geo. III, c 70, s 8.*—Under Act XI of 1849, s. 9, as amended by Bengal Act III of 1873, s. 1, whenever a license is granted for the retail sale of intoxicating liquors, the Collector is authorized to demand "such fee, tax, or duty as may from time to time be fixed with the sanction of the Board of Revenue, or a fee, tax, or duty, adjusted or regulated in such manner and in accordance with such rules as the Board of Revenue may prescribe."

vendors moved the High Court for a mandamus to compel the Board of Revenue to issue rules prescribing the fee payable for licenses. *Held* that the matter wholly related to the revenue and therefore, by 21 Geo III, c. 70, s 8, the High Court had no jurisdiction. IN THE MATTER OF AUDHUR CHUNDRA SHAW. IN THE MATTER OF ACT XI OF 1819 AS AMENDED BY BENGAL ACT III OF 1873 [11 B. L. R., 250

6. —— *Company — Enforcement of director's right—Power of High Court.*—The High Court has jurisdiction to enforce by mandamus the right of persons duly elected directors

to interfere by mandamus in such a case merely because the office of a director is not a permanent office, or because a director can be removed from his

7. —— *Refusal by company to register transfer of shares—Transfer signed by Judge of High Court—Civil Procedure Code, 1859, s. 267.*—Where a company refused to register a transfer of shares

directed to issue out of the Court, ordering the company to register the transfer of such shares, and to issue fresh share certificates in respect of them. QUEEN v. EAST INDIAN RAILWAY COMPANY [Bourke, O. C., 395; 1 Ind. Jur., N. S., 258

8. —— *Writ to compel registrar to register transfer of ship.*—A mandamus

Shipping Act, the Court refused to issue a mandamus IN THE MATTER OF THE SHIP "SHAH CALLANDER" . . . 1 Ind. Jur., N. S., 263

9 —— *Small Cause Court,*

10 —— *Power of High Court over Small Cause Court.*—The High Court

11. —— Return to writ—*Sufficiency of—Land Acquisition Act, VI of 1857.*—By Act VI of 1857, s. 2 (for the acquisition of land for public purposes), it is enacted that, "wherever it appears to the Local Government that any land is required to be taken by Government at the public expense for a public purpose, a declaration shall be

issued out of the High Court at Calcutta to "continue and maintain the existing Wellington Square tank as a public tank and to cause the same to be

land was required to be taken by Government for a public purpose, viz., for the Calcutta Water-Works, it was thereby declared that for the above purpose a public tank and square known as Wellington Square, etc, was required," and proceeded to justify under this notification, etc.,—*Held* that the return was bad. REG v. JUSTICES OF THE PEACE FOR THE TOWN OF CALCUTTA . 2 Ind. Jur., N. S., 24

12. —— *Pleading—Demurrer.*—The prosecutor could not, in India, both

MANDAMUS—*concluded.*

plead and demur to a return to a writ of mandamus, without first obtaining leave of the Court. REG. v. EAST INDIAN RAILWAY COMPANY [1 Ind. Jur., N. S., 244

MANORIAL DUES.

See CUSTOM . I. L. R., 1 All., 440

MAPILLAS.

See MALABAR LAW—CUSTOM. [I. L. R., 15 Mad., 60

See MALABAR LAW—JOINT FAMILY [I. L. R., 15 Mad , 19
I. L. R., 17 Mad., 69

See MALABAR LAW—MAINTENANCE [I. L. R., 6 Mad., 259

——— Adoption of Hindu law—*Presumption as to joint property*—Although Mapillas in Malabar ordinarily follow the Hindu custom of holding family property undivided, yet, as they are not subject to the same personal law as the Hindus, their claims cannot be governed by the legal presumption of joint ownership AMMUTTI v KUNJI KETI [I. L. R., 8 Mad., 452

MAPS.

See EVIDENCE—CIVIL CASES—MAPS.

——— Inspection of—

See CHUR LANDS . 6 B. L. R., 677 [13 Moore's I. A , 607

MARGINAL NOTES TO ACTS.

See STATUTES, CONSTRUCTION OF [I. L. R., 20 Calc., 609
I. L. R., 23 Calc., 55
I. L. R., 25 Calc., 858

MARKET.

See MADRAS DISTRICT MUNICIPALITIES ACT, s. 198 . I. L. R., 10 Mad., 216

——— License for—

See BENGAL MUNICIPAL ACT, 1884, s. 337. [I. L. R., 20 Calc., 654

MARKET RATE.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—MARKET RATE [I. L. R., 10 Calc., 565

MARRIAGE.

See CASES UNDER BIGAMY.

See CONSIDERATION . . 2 Mad., 128

See HINDU LAW — INHERITANCE — DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE — MARRIAGE.

MARRIAGE—*continued.*

See HINDU LAW—MARRIAGE.

See JURISDICTION OF CIVIL COURT — MARRIAGES.

See MAHOMEDAN LAW—MARRIAGE.

See PARSIS . 3 Bom., A. C., 113
[I. L. R., 11 Bom., 1
I. L. R., 13 Bom., 302
I. L. R., 17 Bom., 146
I. L. R., 22 Bom., 430
I. L. R., 23 Bom., 279

——— Agreements or contracts concerning—

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY. [11 B. L. R., 129
22 W. R., 517
25 W. R , 32
I. L. R., 10 Calc , 1054
I. L. R., 10 Bom., 152
I. L. R., 17 Mad., 9
I. L. R., 13 Bom., 126, 131
I. L. R., 13 Mad., 83
I. L. R., 16 Bom., 673
I. L. R., 22 Bom , 658

See SPECIFIC PERFORMANCE — SPECIAL CASES . . 7 Bom., O. C., 122
[5 N. W., 102
I. L. R., 1 Calc., 74

——— Buddhist laws of—

See BURMA CIVIL COURTS ACT, 1875, s. 4. [I. L. R., 10 Calc., 777
L. R , 11 I. A., 109

——— Dissolution of—

See CASES UNDER DIVORCE ACT.

Effect of—

See CASES UNDER MARRIED WOMAN'S PROPERTY ACT.

See SUCCESSION ACT, s. 4. [I. L. R., 23 Calc., 506

——— Expenses of—

See HINDU LAW—ALIENATION—ALIENATION BY MOTHER. [I. L. R., 18 All., 474

See HINDU LAW — INHERITANCE — IMPARTIBLE PROPERTY. [I. L R., 16 Mad., 54

——— Lawful polygamous—

See SUCCESSION ACT, s. 56. [I. L. R., 1 Calc., 148

——— Nullity of—

See DIVORCE ACT, ss. 4 AND 18. [13 B. L. R., 109

See HUSBAND AND WIFE. [I. L. R., 21 Bom., 77

MARRIAGE—*continued.*

——— Presumption of—

See CASES UNDER MAHOMEDAN LAW—ACKNOWLEDGMENT.

See PENAL CODE, s. 498.
[8 B. L. R., Ap., 63

——— Proof of—

See CASES UNDER ADULTERY.

See CASES UNDER BIGAMY.

See DIVORCE ACT, s. 14.
[I. L. R., 16 Mad., 455

See PENAL CODE, s. 498
[I. L. R., 9 Mad., 9
I. L. R., 20 All., 168

See WILL—CONSTRUCTION.
[I. L. R., 13 Mad., 379

——— Registration of—

See EVIDENCE — CIVIL CASES — MISCELLANEOUS DOCUMENTS—MARRIAGES, REGISTRATION OF . I. L. R., 10 Calc., 607

——— Re-marriage.

See HINDU LAW — INHERITANCE — DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE — MARRIAGE . I. L. R., 19 Calc., 289
[I. L. R., 22 Calc., 589
I. L. R., 22 Bom., 321

See JURISDICTION OF CIVIL COURT — CASTE . I. L. R., 13 Mad., 293

——— Unauthorized solemnization of—

See MARRIAGE ACT, 1872, s. 68.
[I. L. R., 14 Mad., 342
I. L. R., 17 Mad., 391
I. L. R., 18 Mad., 230
I. L. R., 20 Mad., 12

——— Validity of—

See HIGH COURT, JURISDICTION OF—BOMBAY—CIVIL.
[I. L. R., 16 Bom., 136

See MAHOMEDAN LAW — ACKNOWLEDGMENT . I. L. R., 21 Calc., 666
[L. R., 21 I. A., 56

1. ——— *Adoption by*

MARRIAGE—*continued.*

3. ——— *Marriage with deceased wife's sister — Stat. 5 & 6 Wm IV, c. 54.*—The marriage of an East Indian, domiciled in Calcutta, with the sister of his deceased wife, is not void under 5 & 6 Will IV, cap 54. DAS MERCES *v.* CONES . . . . 2 Hyde, 65

4. ——— *Marriages of Native Christian converts.*—The question as to the

5. ——— *Prohibited degrees —Roman Catholics—East Indians — Customary law — Dispensation, Proof of — Presumption —*

subjects with Portuguese names, and it not having been found whether they were of English or any other European descent, or of native or mixed parentage,—*Held* that the prohibited degrees for the parties to the marriage were not the degrees prohibited by the law of England, but those prohibited by the customary law of the class to which they belonged,—that is to say, the law of the Roman Catholic Church as applied in this country. *Held* by the Division Bench (GARTH, C.J., and WILSON, J.), on the case being returned to it.—Where a man and a woman intend to become husband and wife, and a ceremony of marriage is performed between them by a clergyman competent to perform a valid marriage, the presumption in favour of everything necessary to give validity to such marriage is one of very exceptional strength, and unless rebutted by evidence

MARRIAGE—*continued.*

strong, distinct, satisfactory and conclusive, must prevail *Piers* v. *Piers*, *2 H. L. C., 331*, followed. According to the rule of the Church of Rome, a dispensation from the proper ecclesiastical authority is necessary to give validity to a marriage between a man and the sister of his deceased wife. In this case the parties were Roman Catholics and intended to [illegible]

[illegible]

to remove the obstacle to the marriage on the ground of affinity had been obtained LOPEZ v. LOPEZ

[I. L. R., 12 Calc., 706

6. ——— ——— ——— *Suit for nullity of marriage — Divorce Act (IV of 1869), ss. 18, 19 (2)—Domicile of origin—Religious community.*—Where the petitioner, a member of the Church of England, came to India about the year 1867, his domicile of origin being then English, and in 1871 married the illegitimate sister (since deceased) of his second wife, whom he subsequently married in 1887, it being uncertain what his domicile was at the date of his first marriage,—*Held* in a suit for nullity of marriage that either the petitioner carried with him to India the laws as to capacity to marry by which he was originally governed, or he was governed by the law of the class to which he belonged, and that in either case the marriage could not be supported. *Lopez* v. *Lopez, I. L. R., 12 Calc., 706*, referred to and applied. HILLIARD v. MITCHELL

[I. L. R., 17 Calc., 324

7. ——— ——— *Personal status—Christian marriage followed by Mahomedan marriage - Rights of widow under Mahomedan law—Divorce.*—In a suit to obtain a widow's share under Mahomedan law in the estate of the deceased, it was proved that the plaintiff and deceased had been married in 1855 as professed Christians in a church at Meerut, that subsequently, having reverted to Mahomedanism, they were married a second time according to Mahomedan law in nikah form, which second marriage had not been dissolved by a Mahomedan divorce In 1886 the husband died, leaving a will excluding the wife from all participation in his estate *Held* that the personal status [illegible]

[illegible]

any change in those rights SKINNER v. SKINNER

[I. L. R., 25 Calc., 537
L. R., 25 I. A., 34
2 C. W. N., 209

8. ——— ——— *Suit by wife for nullity of marriage—General and relative impotency — Impotency quoad hanc — Parsi Marriage*

MARRIAGE—*concluded.*

Act (XV of 1865), s 28.—In March 1882 the plaintiff and defendant, Parsis, were married according to the rites and ceremonies of their religion. In October 1882 the plaintiff attained puberty, and for seventeen months from that time she lived with the defendant in his parents' house; but there was no consummation of the marriage. There was no phy- [illegible]

[illegible]

dant was, from a physical cause, namely, impotency as regards the plaintiff, unable to effect consummation. They also found that there was no collusion or connivance between the parties. *Held*, on this finding that such impotency *quoad* the plaintiff must be regarded as one of the causes going to make consummation of a marriage impossible under s. 28 of Act XV of 1865, there being nothing in the Act to suggest a contrary opinion. The observations of DR. LUSHINGTON and of LORD WATSON in *G* v. *M, L. R., 10 A. C., 171*, as to impotency *quoad hanc* and practical impossiblity of consummation, approved and followed S v. B. I. L. R., 16 Bom., 639

MARRIAGE ACT (CHRISTIAN) V OF 1865.

——— s. 58—*Offence of solemnizing illegal marriage—Celebration of marriage in Hindu form* [illegible]

[illegible]

the same Act. The Sessions Judge discharged the accused without trial on the ground that the enactment in question was inapplicable to the celebration of a marriage according to the Hindu form by a [illegible]

[illegible]

CASE [illegible] 6 Mad., Ap., 20

MARRIAGE ACT (XV OF 1872).

——— ss. 5, 10, 12, 13, 38, 68, 70, and 73 —*Person authorized to perform marriages—Omission of formalities required, as notice, etc.*—*S*, an episcopally-ordained priest of the Syrian Church, under the jurisdiction of the Patriarch of Antioch, solemnized two marriages according to Roman ritual without publishing or causing to be affixed the notices of such marriages required by Part III of the Act. It was proved that *S* used the Roman ritual without the sanction of his Bishop, who was appointed by the Patriarch. *Held* that *S*, having

MARRIAGE ACT (XV OF 1872)—*continued.*

received episcopal ordination, was authorized to

to ministers of religion licensed under that Act and not to episcopally-ordained persons. CAUSSAVEL *v.* SAUREZ . I. L. R., 19 Mad., 273

——— ss. 18 and 66—*False declaration—Penal Code (Act XLV of 1860), s. 193—Maxim, "Ignorantia juris non excusat"*—The maxim *ignorantia juris non excusat* cannot be applied to a declaration, though in fact false, made under s. 18 of Act XV of 1872, inasmuch as the declaration required by that section to be made is a declaration as to the belief only of the person making it, and further, in order to entail the penal consequences provided for by s. 66 of the said Act, such false declaration must be made "intentionally." QUEEN-EMPRESS *v.* ROBINSON I. L. R., 16 All., 212

1. ——— s. 68—*Unauthorized marriage of a Christian child—Persons professing Christian religion*—The accused, who was charged with having committed an offence under the Indian Christian Marriage Act, s. 68, was acquitted on its appearing that the Christian whose marriage he purported to

2. ——— "*Solemnize,*" *Meaning of—Performance of marriage by unauthorized person—Abetment.*—In the Indian Christian Marriage Act, s. 68, the word "solemnize" is equivalent to the words "conduct, celebrate, or perform." Therefore any unauthorized person, not being one of the persons being married, who takes part in performing a marriage, that is, in doing any act supposed to be material to constitute the marriage, is liable to be convicted under that section; and a charge of abetment is sustainable against the persons being married. QUEEN-EMPRESS *v.* PAUL

[I. L. R., 20 Mad., 12

3. ——— and s. 5—*Marriage solemnized by an unauthorized person—"Knowingly"—Presence of a Marriage Registrar.*—The lay trustee of a church in which the banns of marriage between

person who solemnized the marriage was not of any of the classes of persons authorized to solemnize a mar-

MARRIAGE ACT (XV OF 1872)—*concluded.*

4. ——— *Solemnization of marriage under Hindu rites between a Native Christian and a Hindu by a person not authorized to perform marriages under s. 5 of the Act.*—A person who performs a ceremony of marriage according to Hindu form between a Native Christian and a Hindu commits an offence under s. 68 of Act XV of 1872, unless he is authorized to solemnize marriages under s. 5 of the Act. See *Anonymous case, 6 Mad., Ap., 20.* QUEEN-EMPRESS *v.* YOHAN

[I. L. R., 17 Mad., 391

MARRIAGE PRESENTS.

——— Suit to recover—

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY THE COURT.

[13 B. L. R., Ap., 34

MARRIAGE SETTLEMENT.

See HUSBAND AND WIFE

[I. L. R., 10 Calc., 951

See WILL—CONSTRUCTION.

[I. L. R., 4 Calc., 514

——— Order as to—

See DIVORCE ACT, s. 40.

[14 B. L. R., Ap., 6

——— Construction of settlement—Trust

ment did not contain a power to invest in the purchase of real estate. *R* died in the lifetime of *S*, and a portion of the trust fund was invested by the trustees in the purchase from *S* of real estate vested in her as representative of *R*. *S* afterwards married *P*, and during her second coverture a further portion of the trust fund was, with the consent of *S*, invested in the purchase of real estate. *S* survived *P*, and died intestate, leaving a son and daughter and the children of another daughter her next of kin. *Held*, first, that the events contemplated by the settlement not having arisen, the trust fund became the

[I Ind. Jur., N. S., 290

MARRIED WOMAN.

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO I. L. R., 18 Bom., 468

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 17 Calc., 488

—— Enticing away—

See COMPOUNDING OFFENCE. [I. L. R., 1 Mad., 191

See CASES UNDER PENAL CODE, S. 498.

—— Liability of—

See SUCCESSION ACT, S. 4 [13 B. L. R., 383

MARRIED WOMAN'S PROPERTY ACT

See SUCCESSION ACT, S. 4 [13 B. L. R., 383

—— ss. 4, 7, and 8.

See HUSBAND AND WIFE [I. L. R., 4 Calc., 140
2 C. L. R., 431

—— ss. 7 and 8.

See HUSBAND AND WIFE. [I. L R., 1 Calc., 285

—— s. 8

See PARTIES—PARTIES TO SUITS—HUSBAND AND WIFE . 10 C. L. R., 536

1. —— *Husband and wife—Settlement—Property settled on married woman to her separate use and without power of anticipation—Power of married woman to charge such property with payments of debts incurred subsequently to marriage.*—*Held* that, under s. 8 of Act III of 1874, a married woman has power to charge property settled upon herself, for her separate use without power of anticipation, with the payment of debts incurred by her subsequently to her marriage, and such a charge is valid and binding. CURSETJI PESTONJI TARACHAND *v.* RUSTOMJI DOSSABHOY [I. L. R., 11 Bom., 348

2. — — and s. 9—*Restraint on anticipation—Transfer of Property Act (IV of 1882), s. 10.*—S. 8 of Act III of 1874 extends to the separate property of a married woman subject to a restraint upon anticipation. S. 10 of the Transfer of Property Act merely excepts from the general rule laid down in that section the particular case of a married woman, and does not give to a restraint upon anticipation any greater force than it had before the passing of the Act, but merely preserves to it the effect it had previously, leaving the Married Woman's Property Act of 1874 and the decisions upon it untouched. HIPPOLITE *v.* STUART [I. L. R., 12 Calc., 522

3. —— *Insolvency of married woman—Property settled on her for separate use without power of anticipation, whether comprised in the vesting order or not—Insolvent Act (11 & 12 Vict., c. 21), s. 63.*—A creditor's right to be satisfied out of the separate property of a married woman is, in the case of post-nuptial debts, restricted to the property as to which there is no restraint on anticipation. S. 8 of Act III of 1874 was not intended to a give married woman the power of evading such restraint. *Hippolite* v. *Stuart, I. L. R., 12 Calc., 522,* dissented from. IN RE MANTEL [I. L. R., 18 Mad., 19

MARSHALLING OF SECURITIES.

See MORTGAGE—MARSHALLING.

MASSES.

—— Bequest for performance of—

See WILL—CONSTRUCTION 2 Hyde, 65
[2 B. L. R., O. C., 148
5 B. L. R., 433
I. L. R., 15 Mad., 424

MASTER AND SERVANT.

See ARMS ACT, 1878. [I. L. R., 20 Calc., 434
3 C. W. N., 394
I. L. R., 18 All., 276
I. L. R., 24 Bom., 423
I. L. R., 22 All., 118

See CHARGE—FORM OF CHARGE—SPECIAL CASES—MASTER AND SERVANT. [3 Bom., Ap., 1

See GOVERNMENT . 7 B. L. R., 683

See JUDGE—QUALIFICATIONS AND DISQUALIFICATIONS. [I. L. R., 9 Bom., 172

See LIMITATION ACT, 1877, s. 10 (1859, s 2) . . 1 B. L. R., S. N., 11

See SECRETARY OF STATE . 1 N.W., 118
[Bourke, A. O. C., 106
5 Bom., Ap., 1

1. —— Liability of master for acts of servant—*Acts within scope of servant's duty.*—A master is responsible for the acts of his servants done within the scope of his duties, and for the master's benefit AMENT DASS *v.* KELLY [1 N. W., Part 7, p. 107: Ed. 1873, 194

2. —— *Trespass.*—The appellant, having obtained a decree for khas possession of a share in a zamindari, had refused to recognize the raiyats whom the farmers under her co-sharers had settled in the estate; and her servants cut and carried off the crops of those raiyats. *Held* by GLOVER, J., that the appellant was liable for the acts of her servants, which were done in furtherance of her known wishes and for her benefit. *Held* by LOCH, J., that these acts were beyond the ordinary scope of the servants' duty; and that, unless it could be shown that the appellant ordered or ratified the acts, she was not liable. In the present case,

MASTER AND SERVANT—*continued.*

the circumstances gave rise to a strong presumption that the acts were done with her knowledge, which presumption had not been rebutted, and therefore she was liable SHAMASUNDARI DEBI *v.* DUKHU MANDAL . 2 B. L. R., A. C., 227

S. C SHAMASOONDUREE DEBIA *v* MALLYUT MUNDUL . 11 W. R., 101

3 — [illegible] *Damage* [illegible] *crew.*— [illegible] ment, a [illegible] interests [illegible] wantonl[illegible] where the act of the servant is done by him to forward some purpose of his own, the master would not be responsible The mast r, not the owners of a merchant ship is primarily responsible for damage done in the course of his employment by one of his subordinate officers or crew to the person who is injured. ANONYMOUS . Bourke, A. O. C., 144

4. ——— A boat which *S* let to *G A & Co.* for unloading the ship *B*, was lost in consequence of the negligence of the mate *S* sued the captain for the damage sustained, and the lower Court dismissed the suit with costs, on the ground that *G A & Co.*, the ship's agents, who had hired the boat, and not the captain, were liable. *Held* on appeal, reversing the judgment of the lower Court, but without costs, that the captain was not absolved from liability because the injury was caused by the negligence of the crew, although they acted contrary to his orders, that it was the duty of the captain to deliver the cargo to the consignees, and the loading of the cargo-boats was a part of that duty, and that the fact of the owners of the ship having agents in Calcutta did not alter the relations between the captain and the public. SUTHERLAND *v* SHAW Bourke, A. O. C, 92

5. ——— *Negligence of servant—Bailor and bailee—Proprietor and driver of public conveyance—Bom. Act VI of 1863* — The plaintiffs sued the proprietor of a buggy for [illegible] negli[illegible] oved [illegible] the [illegible] with the buggy and the use of two horses for the day to be used entirely at the driver's discretion for the purpose of plying for hire. The driver was to pay [illegible]

MASTER AND SERVANT—*continued.*

6. ——— *Offer of money by defendant to avoid litigation—Suit for damages.*— The servant of the defendant, who was staying in the plaintiff's hotel, broke a filter, the property of [illegible]

benefit. The defendant offered to the plaintiff as compensation R30 (which was refused), but without acknowledging any liability. *Held* (1) that the defendant was not liable for the act of his servant; (2) that the plaintiff was not entitled to a decree for R30. GRAY *v.* FIDDIAN I. L. R., 15 Mad., 73

7. ——— *Damage by cut-* [illegible]

the owners whom he represented, were proved against certain of the defendants holding some employment under others, who were made co-defendants with them in this suit. These co-defendants were not proved to have ordered such acts, nor was there any evidence that to cut or carry away timber was within the scope of the employment of any of the defendants The co-respondent employers were not therefore under any legal responsibility in the matter. CASPERSZ *v* KISHORI LAL ROY CHOWDHRI . . . I. L. R., 23 Calc., 923 [1 C. W. N., 12

8 ——— *Trespass—Ratification—Damages*—The plaintiff let a cargo-boat [illegible]

tiff refused to give up 5[illegible] bales then remaining unlanded from his boat. *U C* communicated the circumstances to an assistant in defendant's firm, who afterwards went with *U C* and forcibly took the goods from the plaintiff's boat without satisfying the plaintiff's lien thereon, and the defendants received them into their godown. It was proved that *U C* and the assistants acted without the knowledge or authority of the defendants, and that the defendants received the goods without any knowledge of how they had been obtained *Held* that, in the absence of such knowledge on their part, the receipt of the goods by them did not amount to a ratification of the wrongful act of their assistant and *U C* so as to render them liable in an action by the plaintiff for damages for the same. GIRISH CHANDRA DASS *v.* GILLANDERS, ARBUTHNOT & Co. . . . . 2 B. L. R., O. C., 140

9. ——— Liability of master for criminal acts of servant—*Express authorisation.*— A master is not criminally responsible for the wrongful act of a servant, unless he can be shown to have expressly authorised it. [illegible]UTTEE ALI KHAN GOLAM HADEE KHAN . 6 W. R., Cr., 60

MASTER AND SERVANT—*continued.*

10. ——— *Abetment or instigation by master.*—To make a master criminally responsible for an offence committed by his servants, it must be shown that there has been some act or illegal omission on the part of the master whereby he abetted the offence or some prior instigation or conspiracy. QUEEN v. SHAMSUNDER

[1 N. W., Ed. 1873, 310

11. ——— *Indian Ports Act (XII of 1875), s. 22.*—The servants of a contractor who had engaged to discharge ballast from a ship lying in the port of Calcutta, threw the ballast into the river within the limits of the port, and thus committed an offence under s. 22 of the Indian Ports Act (XII of 1875). It did not appear that the contractor had abetted the offence. *Held* that he was not, in the absence of proof of abetment, liable for the acts of his servants. CHUNDI CHURN MOOKERJEE v. EMPRESS

[I. L. R., 9 Calc, 849: 12 C. L. R., 508

12. ——— **Action for harbouring or sheltering the servant of another**—*Notice of contract of service.*—An action will not lie for the mere harbouring or sheltering a person who is under a contract of service to another, even with notice of such contract of service. *Blake v. Lanyon, 6 T. R., 221,* distinguished. BERKOWSKY v. THACKER, SPINK & CO . . . 6 B. L. R., 107

13. ——— **Wrongful dismissal, Suit for**—*Claim for wages—Damages.*—Every master and

[2 W. R., 307

ISSUR CHUNDER MOOKERJEE v. PUDDO LOCHUN GOOPTO . . . 5 W. R., Mis, 18

14. ——— *Misconduct.*—Mere venial faults are not sufficient, but there must be something gross in the acts or breaches of duty committed to warrant a summary dismissal. HAM v. EASTERN BENGAL RAILWAY CO . 2 Hyde, 228

15. ——— *Unskilfulness—Insolence—Justifiable dismissal.*—Unskilfulness in a servant is no ground for dismissal unless it amounts to absolute incompetence. A solitary instance of insolence is not sufficient to justify a master in dismissing a skilled servant. Where no time was specified for a day's work in a contract, whereby a company (the defendants) engaged the plaintiff, a skilled mechanic, in the capacity of an engineer, and "to make himself generally useful," any work within his capacity was held to form part of his duty.

MASTER AND SERVANT—*continued.*

16. ——— *Probability of similar employment—Disobedience of orders—Intemperate language.*—If a firm brings out persons to a distant country and undertakes to give a return

before the expiration of the term of the engagement without regard to the probabilities of his obtaining similar employment. The dismissal of a servant is

17. ——— *Misconduct of servant—Right to portion of pay due at end of month.*—A servant is not liable for his misconduct to forfeit such portion of his arrears of pay as had become due to him at the expiration of each month's service. The servant's misconduct may have justified his discharge in the middle of a month; if so, he is entitled to no pay for any portion of such month. BROJO MOHUN MYTEE v. SWAYNE. SWAYNE v. BROJO MOHUN ROY . . . 1 Hay, 297

18. ——— *Acquiescence in* [illegible] *of wages.*—On

for the fourth, with a free passage home; and the company might at any time determine the engagement by a six months' notice. The company gave

until the beginning of 1864, when he was employed to drive passenger trains for the defendants, who thereupon increased his salary. The plaintiff did not assent to the increase, but claimed the balance of salary due to him, as on the footing of his whole

during which month he had been suspended, and his pay had been withheld; but he had not previously claimed the pay so withheld. In 1862 he had applied to be restored to his position under his original

The Court below gave

in his dismissal; that in such a case the servant serves under a fresh contract, not at the rate of wages previously received by him, but at the rate he is actually receiving; that a servant whose wages have for one month been stopped during suspension for

MASTER AND SERVANT—*continued.*

19. ———— *Incompetence—Rendering true and just accounts*—The plaintiff,

with the defendants to enter into their service as assistant in their tea gardens for a period of three years. The agreement stipulated that the plaintiff

may come into his possession ...

... be dis- The short ... then dismissed from the company's service, on the ground of his incompetence. In an action brought for damages for wrongful dismissal, the Judge of the Small Cause Court was of opinion that, under the circumstances, there was no implied warranty on the part of the plaintiff of his competence, and the

... been an answer to the action, and there- ... en allowed to "True and ... as an inex-

20. ———— *Justification, Plea of—Misconduct—Issues—Cross-examination*—In a suit for wrongful dismissal in which the defendants

MASTER AND SERVANT—*continued.*

furnished the plaintiff with particulars of the misconduct in question, and intimated to him their

examination for the purpose of affecting his credit. MUNCHERSHAW *v.* NEW DHURUMSEY SPINNING AND WEAVING COMPANY . I. L. R., 4 Bom., 576

21 ———— *Right to wages for broken period.*—A dismissed servant is entitled to wages for any broken period during which he may have served, at the rate he was earning when dismissed. RUGHOONATH DASS *v.* HALLE [16 W. R., 60

22 ———— *Justification—*

JOUGUET . . . . . 6 N. W., 130

23. ———— Wages, Suit for—*Subsequent misconduct—Forfeiture of wages.*—A finding of fact that an employe is entitled to his wages notwithstanding subsequent misconduct, is not wrong in law. KALEE CHURN RAWANEE *v.* BENGAL COAL COMPANY [21 W. R., 405

24 ———— Admission by ...

dismissed, whether the dismissal is or is not upon such a notice as the manager has a right to demand. KALEE CHURN RAWANEE *v.* BENGAL COAL COMPANY [21 W. R., 405

25. ———— Servant leaving after due notice, Right of—*Right to wages—Custom of office*—Where a servant leaves his service after

[2 Agra, Mis., 1

26. ———— Monthly servant leaving without notice—*Forfeiture of wages*—Where a servant who was engaged by the month served from the 1st November to the 3rd December 1872, and left his master's service on the 4th December, without giving notice, it was held that the servant was entitled to be paid his wages up to the end of November, but forfeited the wages payable to him in respect of his December services. RAMJI MANAR *v.* LITTLE . . . . . 10 Bom., 57

27. ———— *Forfeiture of wages—Contract Act (IX of 1872), s. 74.*—Where

MASTER AND SERVANT—*concluded.*

Cotton Mills Co *v.* Naffer Chunder Roy
[2 C. W. N., 687

28. ——————— *Monthly service —Wrongful leaving of employment, Consequence of*

Dhumee Behara *v.* Sevenoaks
[I. L. R., 13 Calc., 80

MASTER OF SHI .

——— Liability of—

See Bill of Lading . 13 B. L. R., 394

See Charter Party 8 B L. R., 340
[I. L. R., 7 Bom., 51

——— Lien of, for wages and disbursements.

See Bottomry-Bond . 5 B L. R., 258
[6 B. L. R., 323
1 Ind. Jur., N. S., 303

MAXIMS.

——— Actio personalis moritur cum persona.

See Right of Suit—Survival of Right.
[I. L. R., 13 Bom., 677

——— "Actus curiæ neminem gravabit."

The maxim *"Actus curiæ neminem gravabit"* observed upon as requiring qualification. Kambinayani Javaji Subbarajulu Nayani varu *v.* Uddighiri Venkataraya Chetty
[2 Mad., 238

——— Aedificare in tuo proprio solo non licet quod alteri noceat.

See Custom . I. L. R., 10 All., 358

See Prescription—Easements—Privacy
[I. L. R , 10 All., 358

——— "Audi alteram partem."

See Club . . I. L. R., 7 Mad., 319

——— Certum est quod certum reddi potest.

See Mortgage—Form of Mortgages.
[I. L. R., 9 All., 158

——— "Contra non volentem agere non currit præscriptio."

See Limitation Act, 1877, art. 144—Adverse Possession.
[I. L. R., 8 Bom., 585

MAXIMS—*continued.*

——— "Debitum et contractus sunt nullius loci."

See Jurisdiction—Causes of Jurisdiction - Cause of Action—Negotiable Instruments . . 1 Mad., 436

——— *De minimis non curat lex.*

See Defamation . I. L. R., 13 Mad., 34

——— "Expressio unius est exclusio alterius."

See Deed—Construction . 10 Bom., 51

——— Expressum facit cessare tacitum.

See Transfer of Property Act, s. 1[illegible]
[I. L. R., 21 Ma[illegible], 69

——— "Ignorantia legis neminem excusat."

See Marriage Act, 1872, s [illegible]
[I. L. R., [illegible] All., 213

1. ——————— *Suit [illegible] illegal adoption.*—A suit to set aside the [illegible] adoption of a second son must be made within twelve years from cause of action. The maxim *"Ignorantia legis neminem excusat"* applies to questions of the Hindu law of inheritance and adoption as well as to other laws Radhakissen Mahapater *v.* Sreekissen Mahapater . . . . . 1 W. R., 63

See as to this maxim Sadho Singh *v.* Kishnee
[3 N. W., 318

See contra, Soorburnomonee Dabia *v.* Petumber Dobey . . Marsh., 221: 1 Hay, 497

2. ——————— *Presumption as to knowledge of law and limit of.*—Where loss of life and damage have resulted from the explosion of fireworks in a passenger carriage, the onus is on the railway company to show that they took due care to prevent the conveyance of fireworks in that manner, and not on the plaintiff to shew that they did not *Scott* v. *London Dock Co., 3 H. & C., 596; Kearney* v. *London, Brighton and South Coast Railway Co., L R., 5 Q B., 411* · on appeal *L. R., 6 Q B., 759; Burne* v. *Boadle, 2 H. & C., 722; Cotton* v. *Wood, 8 C. B., N. S., 568; Foulkes* v. *Metropolitan Railway Co., L. R., 5 C. P. D., 157; Welfare* v. *London and Brighton Railway Co., L. R., 4 Q. B., 6[illegible]3;* and *Daniel* v. *Metropolitan Railway Co., L. R., 3 C P., 593* · on appeal, *L. R., 5 E. & I., Ap. 45,* referred to *Per* O'Kinealy, J. (in the Court below)—In the absence of evidence that the defendants had taken steps to prevent passengers from taking fireworks into the carriage, the Court cannot presume that the fireworks were taken clandestinely into the compartment, notwithstanding the fact that such carriage of fireworks is an offence, and that *every one is presumed* to know the law. The maxim that every man is presumed to know the law [illegible] criminal [illegible]

MAXIMS—*continued*

from him. EAST INDIAN RAILWAY CO. *v.* KALLY DASS MOOKERJEE . I. L. R., 26 Calc., 465

——— "In pari delicto potior est conditio possidentis."

See CONTRACT—WAGERING CONTRACTS. [I. L. R., 9 Bom., 358

See ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS [I. L. R., 1 All., 403

——— "No one can be Judge in his own cause"

See CONTRACT—CONDITIONS PRECEDENT [I. L. R., 5 Mad., 173

——— Nova constitutio futuris formam imponere debet, non præteritis.

See STATUTES, CONSTRUCTION OF. [5 Moore's I. A., 109

1. ——— "Nullum tempus occurrit regi"—*Hindu law*—This maxim is a rule of Hindu and Mahomedan as well as English law. VYAKUNTA BAPUJI *v.* GOVERNMENT OF BOMBAY [12 Bom., Ap., 1

2. ——— *Legislation in* [illegible]

[12 Bom., Ap., 1

GOVERNMENT OF BOMBAY *v.* HARIBHAI MONBHAI . 12 Bom., Ap., 225

——— "Omnia præsumuntur contra spoliatorem."

See ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS [3 Bom., A. C., 116

See SALT—ACTS AND REGULATIONS RELATING TO—BOMBAY 7 Bom., A. C., 89

——— "Omnia præsumuntur rite esse acta."

See APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—GUARDIAN. [2 N. W., 89

See EXECUTION OF DECREE NOTICE OF EXECUTION . . . 22 W. R., 5

See INFORMATION OF COMMISSION OF OFFENCE . I. L. R., 7 Mad., 436

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, s. 622 [I. L. R., 10 All., 119

1. ——— *Proceedings of public officer.*—The proceedings of a public officer must be presumed to be regular; and if they took place long ago (*e.g.*, twenty years previously), it is not just to require a proof of such circumstances as due service of notice. KHAN *v.* BAMA SOONDUR E DOSSEE [25 W. R., 63

MAXIMS—*continued.*

2. ——— *Publication of Government order, Presumption as to.*—There being [illegible]

TARY OF STATE FOR INDIA [I. L. R., 26 Calc., 792

3. ——— *Revenue cases*— [illegible]

the parties must be held to have been properly represented and to be bound by the decisions. AHSANOLLAH *v.* JUSODA . . . 23 W. R., 79

4. ——— *Sale in execution for arrears of rent.*—Where a tenure is sold in exe- [illegible]

fulfilled FYAZOODDEEN BHOOYA *v.* SHUMSUNNISSA BIBEE . . . . 12 W. R., 508

See RAM RUKHA ROY JEMADAR *v.* GOBIND DOSS BYRAGEE . . . . 15 W. R., 291

5. ——— *Certificate of sale—Proof of title without production of certificate.*—A plaintiff who has purchased land at a sale in execution of a decree is not bound to rely on the certificate to prove his title. If it is proved *aliunde* [illegible]

6. ——— *Transfer of case not recorded.*—Where an estate which was subject to a mortgage was attached in execution, but was leased out to fresh tenants and under-tenants between the attachment and the sale; and the case was transferred from the jurisdiction of one Court to that of another, in some way which was not apparent on the record; and the lower Court ruled that the transfer was irregular and that the sale was void against the new lessees and under-lessees.—*Held* that the lower [illegible]

7. ——— *Irregularities in proceedings.*—Where irregularities had clearly occurred in proceedings, the Court refused to presume a person had been made a party and was therefore bound by them. CHOWDHRY MAHOMED ZUHOORUL HUQ *v.* MAHOMED YACOOB . 23 W. R., 387

MAXIMS—*concluded*.

—— "Optimus interpres rerum usus."

See LANDLORD AND TENANT—EJECTMENT—GENERALLY . 13 B. L. R., 416

—— Optimus legis interpres consuetudo.

See MAMLATDAR, JURISDICTION OF. [I. L. R., 14 Bom., 372

—— Quod fieri non debuit, factum valet.

See CASES UNDER HINDU LAW—ADOPTION—DOCTRINE OF FACTUM VALET AS RESPECTS ADOPTION.

See HINDU LAW—ADOPTION—REQUISITES FOR ADOPTION—AUTHORITY. [I. L. R., 12 All., 328

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT BE ADOPTED. [I. L. R., 14 All., 67
I. L. R., 21 All., 460
L. R., 26 I. A., 113

See HINDU LAW—MARRIAGE—RIGHT TO GIVE IN MARRIAGE, ETC. [I. L. R., 11 Bom., 247
I. L. R., 22 Bom., 812

See MADRAS TOWNS IMPROVEMENT ACT III OF 1871, ss. 61, 62. [I. L. R., 7 Mad., 65

—— Respondeat superior.

See ABETMENT. I. L. R., 20 Bom., 394

—— Sic utere tuo ut alienum non lædas.

See CUSTOM . I. L. R., 10 All., 358

See PRESCRIPTION—EASEMENTS—PRIVACY. [I. L. R., 10 All., 358

—— Volenti non fit injuria.

See NEGLIGENCE I. L. R., 13 Bom., 183

MEASUREMENT OF LANDS.

See APPEAL—MEASUREMENT OF LANDS.

See LEASE—CONSTRUCTION. [I. L. R., 14 Calc., 99
L. R., 13 I. A., 116

See RES JUDICATA—ESTOPPEL BY JUDGMENT . I. L. R., 3 Calc., 271
[3 C. L. R., 74

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS. [I. L. R., 10 Calc., 507

—— Power of Ameen in.

See PENAL CODE, s. 186. [I. L. R., 23 Calc., 280

—— Question of standard of.

See BENGAL TENANCY ACT, s. [illegible] [I. L. R., 17 Calc., 277

MEASUREMENT OF LANDS—*continued*.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL. [I. L. R., 22 Calc., 477
I. L. R., 25 Calc., 34
I. L. R., 26 Calc., 556

1. —— "Jurisdiction"—*Valuation of suit—Bengal Rent Act, 1869, s. 37*.—The word "jurisdiction" in Bengal Act VIII of 1869, s. 37, refers not merely to local jurisdiction, but also to jurisdiction as to value. PEAREE MOHUN MOOKERJEE *v.* RAJ KRISTO MOOKERJEE . 20 W. R., 385

2. —— *Suit to measure land—Bengal Rent Act, 1869, s. 37*.—A suit to establish a zamindar's right to measure land must be brought in the Court which would have had jurisdiction in a suit to recover such land. SHURO SOONDUREE DEBIA *v.* BULORAM GOOHO . 24 W. R., 423

3. —— Right to measure—*Proprietor of estate—Bengal Rent Act, 1869, s. 37 (Beng. Act VI of 1862, s. 9)*.—*Held* by the majority of the Court (SETON-KARR, J., *dubitante*) that a proprietor of an estate is entitled, under s. 9, Bengal Act VI of 1862, to measure the lands of any subordinate tenure within the limits of his estates, whatever the character or size of the tenure or the amount of rent paid in respect of it. RUN BAHADOOR SINGH *v.* MULOOBUM TEWAREE . . . 8 W. R., 149

4. —— *Zamindar—Bengal Rent Act 1869, s 37 (Beng. Act VI of 1862, s. 9)*.—There must be some express restriction before a zamindar can be precluded from the benefit given him by s 9, Bengal Act VI of 1862, of measuring the lands in the possession of his raiyats. OOMA CHURN BISWAS *v.* SHIBNATH BAGCHEE 8 W. R., 14

5. —— *Proprietor in possession—Bengal Rent Act, 1869, s. 27 (Beng. Act VI of 1862, s. 9)*.—Under s. 9, Bengal Act VI of 1862, the proprietor who can claim to measure must be a proprietor in possession, and not a proprietor out of possession, although he may be able to prove his title. The only question which the Collector has to try under that section is, which person is in possession; and his decision is final only as to possession and not as to title. The unsuccessful party has a right to sue in the Civil Court for a declaration of his right. KALEE DASS NUNDEE *v.* RAMGUTTEE DUTT [6 W. R., Act X, 10

6. —— *Right of proprietor to survey and measure—Bengal Rent Act, 1869, s. 37*.—A proprietor of an estate or tenure has a right to make a general survey and measurement of the lands comprised in his estate, under the provisions of s. 37 of the Rent Act, without proving that he is in receipt of the rents, there being nothing in law which prevents him from making such a survey or measurement as is contemplated by ss. 36 and 37 merely because his estate happens to be sub-let to a number of tenure-holders. The only excepted case is where there is a special agreement to the contrary. BROJENDRO COOMAR ROY *v.* KRISHNA COOMAR GHOSE [I. L. R., 7 Calc., 634: 9 C. L. R., 414

MEASUREMENT OF LANDS—*continued.*

7. ——— ——— ———*Person in receipt of rents—Jurisdiction of Collector—Bengal Rent Act, 1869, s. 37 (Beng Act VI of 1862, s 9).*—A Collector's jurisdiction to allow a measurement where the proprietary right to the land is contested is not barred by ss. 9 and 10, Bengal Act VI of 1862, if he is satisfied that the party seeking his assistance to measure is in receipt of the rents. If the Collector disallows the measurement on the ground that the applicant is not in receipt of the rents, the party aggrieved may appeal to the Civil Court. SMITH *v.* NUNDUN LALL . 6 W. R., Act X, 13

In the same case on review of judgment the order of the High Court was amended, and the case remanded to the Judge to determine, according to ss. 9 and 10 of the above Act, which party was in receipt of the rents, and under which of these sections the application for measurement had been made, and to decide accordingly. NUNDUN LALL *v* SMITH [7 W. R., 188

8. ——————— *Proprietor in receipt of rents—Bengal Rent Act, 1869, s. 37 (Beng. Act VI of 1862, s 9).*—Under s. 9, Bengal Act VI of 1862, only a proprietor who is in receipt of the rents of an estate or tenure has a right to make a general survey and measurement of the land comprised in such estate or tenure WISE *v.* RAM CHUNDER BYSACK . . . 7 W. R., 415

AHSANOOLLAH *v.* KADIR . 25 W. R., 92

9. — —— — - - - *Proprietor in receipt of rents—Proof of possession of land.*—A proprietor of land need only show that he is in undoubted possession of the property to entitle him to ask the assistance of the Court to enable him to measure his land. RAJ CHUNDER ROY *v.* KISHEN CHUNDER [4 W. R., Act X, 16

10. ——————— *Proprietor in receipt of rents—Bengal Rent Act, 1869, s. 37 (Bengal Act VI of 1862, s. 9)—Lease to third party.*—A proprietor of an estate is not barred from measurement by the fact of its being leased to a third party, nor is a proprietor bound, under s 9, Bengal Act VI of 1862, to show that he is in actual receipt of the rents at the time when he applies to measure the land KRISHTO MOTEE DEBIA *v.* RAM NIDHEE SIRCAR [9 W. R., 331

11. ——————— *Neighbouring za-* [illegible] *(Beng.* [illegible] and 10 [illegible] neigh- [illegible] the act [illegible] ar. His [illegible] ESSUREE [illegible] [illegible] Act X, 101

12. ——————— *Restraining of* [illegible]

MEASUREMENT OF LANDS—*continued.*

itself as against the grantee, and does not amount to a restraint of the right of measurement under Bengal Act VI of 1862. KEBUL KISHEN DOSS *v.* JAMINEE [5 W. R., Act X, 47

13. ——————— *Lessee under Court of Wards—Bengal Rent Act, 1869, s. 37 (Beng Act VI of 1862, s. 9).*—A lessee under the Court of Wards is competent, under s. 9, Bengal Act VI of 1862, to make a general survey of the lands comprised in his lease WATSON & Co. *v.* BHOONYA KOONWAR NARAIN SINGH [W. R., 1864, Act X, 105

14. - - - - ——— *Person not in receipt of rents—Disputed title—Title—Possession—Receipt of rent.*—Where a person sues to have the assistance of the Collector to measure lands, of which he alleges himself to be the proprietor by purchase, he is not entitled to have such assistance if his title is disputed, and if he is found not to have been in possession or in the receipt of rents from the date of his purchase. DURGA CHARAN MAZUMDAR *v.* MAHOMED ABBAS BHUYA . 6 B. L. R., 361

S. C. DOORGA CHURN DOSS *v.* MAHOMED ABBAS BHOOYAN . . . . 14 W. R., 339

Upholding on appeal under the Letters Patent the decision of GLOVER, *J.*, in DOORGA CHUNDER DOSS *v.* MAHOMED ABBAS BHOOYAN . 14 W. R., 121

15. ——————— *Bengal Rent Act, 1869, s. 37 (Beng Act VI of 1862, s. 9)—Lakhiraj land.*—S. 9, Act VI of 1862, gives no authority to proprietors to survey or measure lakhiraj land. GOLAM KHEJUR *v.* ERSKINE & Co. 11 W. R., 445

16. ——————— *Right of zamindar—Lakhiraj—Bengal Rent Act, 1869, s. 37 (Beng. Act VI of 1862, s. 9)*—A zamindar is not entitled to measure the lands of a lakhirajdar holding a rent-free tenure within the limits of his estate. RANGLAL SAHU *v.* SIALI DHAR DAS [3 B. L. R., Ap., 27: 11 W. R., 293

17. ——————— *Bengal Rent Act, 1869, s. 37 (Beng Act VI of 1862, s. 9)—Lakhiraj land.*—The defendant held land within the plaintiff's patni, paying rent to the plaintiff, and also certain lakhiraj lands The plaintiff applied to the Collector for permission to make a survey and measurement of the lands of the patni He was opposed by the defendant, who objected to any survey being made of the lakhiraj land *Held*, under Bengal Act VI of 1862, ss 9 and 10, the plaintiff was not entitled to survey and measure the lakhiraj land. PRASANNAMAYI DEBI *v.* CHANDRANATH CHOWDHRY [2 B. L. R., S. N., 5: 10 W. R., 361

18. ——————— [illegible]

measurement of his share SANTIRAM PANJA *v.* BYKUNT PANJAH [10 B. L. R., 307: 19 W. R., 280

MEASUREMENT OF LANDS—*continued.*

Nor under Bengal Act VI of 1862, s 10, and Bengal Act VIII of 1869, s. 38 MOOLOOK CHAND MUNDUL v. MODHOOSOODUN BACHASPUTTY
[10 B. L. R., 398 note: 16 W. R., 526

MAHOMED BAHADUR MOZOOMDAR v. RAJ KISHEN SINGH 10 B. L. R., 401 note: 15 W. R., 522

SHORENDRO MOHUN ROY v. BHUGGOBUTTY CHURN GUNGOPADHYA
[10 B. L. R., 403 note: 18 W. R., 332

BABA CHOWDHRY v. ABEDOODDEEN MAHOMED
[I. L. R., 7 Calc., 69

S C. RUPENNESSA BIBI CHOWDHRANI v. ABEDUDDIN MAHOMED . . . 8 C. L. R., 73

PEAREE MOHUN MOOKERJEE v. RAJ KRISTO MOOKERJEE . . . . 20 W. R., 385

19. —————— *Bengal Rent Act, 1869, ss. 37 and 38—Measurement of lands—Co-sharers—Notice of intended measurement.*—The words "the person claiming the right to measure" in s 37 of Bengal Act VIII of 1869 must be read as implying the sole proprietor or whole body of [illegible] proprietors. It is not sufficient that one co-sharer should give notice, and make his co-sharers parties to the suit. See *Santi Ram Panjah v. Bykunt Panjah, 10 B. L. R, 397 19 W. R., 280; Pearee Mohun Mookerjee v. Raj Kisto Mookerjee, 20 W. R., 385*, and *Moolook Chand Mundul v. Modhoosoodun Bachaspatty, 16 W. R., 126: 10 B. L. R., 398 note.* ISHAN CHUNDER ROY v. BUSARUDDIN
[5 C. L. R., 132

20. —————— *Bengal Rent Act, 1869, s. 38—Fractional proprietor—Parties.*—A part-proprietor of an estate is competent, under Bengal Act VIII of 1869, to apply for measurement of its lands after making the remaining proprietors parties to the proceedings. ABDOOL HOSSEIN v. LALL CHAND MOHTAN DASS
[I. L. R., 10 Calc., 36: 13 C. L. R., 323

21. —————— *Shareholder—Proprietor*—An applicant under s. 10 of Bengal Act VI of 1862 must be the proprietor of the estate, and not merely a shareholder in the proprietary body. *Moolook Chand Mundul v. Modhoo Soodun Bachasputty, 10 B. L. R., 398 note; Mahomed Bahadur Mozoomdar v. Raj Kishen Singh, 10 B. L. R., 401 note; Shorendro Mohun Roy v. Bhuggobutty Churn Gangopadhya, 10 B. L. R., 403 note*, followed. BABA CHOWDHRY v. ABEDOODDEEN MAHOMED . . . I. L. R., 7 Calc., 69

S C. RUPENNESSA BIBI CHOWDRANI v. ABEDUDDIN MAHOMED . . . 8 C. L. R., 73

22. —————— Liability to measurement—*Bengal Rent Act, 1869, s. 37 (Beng. Act VI of 1862, s. 9)—Suit against different defendants*—A single suit simply to measure lands may be brought under s. 9, Bengal Act VI of 1862, against several defendants although their rights and tenures are different SHUSHEE BHOOSUN BANERJEE v. NUBOCOOMAR CHATTERJEE . . . 8 W. R., 94

23. —————— *Bengal Rent Act, 1869, s. 37 (Beng. Act VI of 1862, s. 9)—Purchaser of subordinate tenure.*—The purchaser of a subordinate tenure who did not enter his name in the talukhdar's serishta, and whose tenure therefore was not wholly disconnected from the estate to which it had been joined, is liable to have his lands measured under s. 9, Bengal Act VI of 1862. TWEEDIE v. RAM NARAIN DOSS . 9 W. R., 151

24. —————— Application for measurement—*Bengal Rent Act, 1869, s. 38—Right to measure.*—Without a special application made by the proprietor under Bengal Act VIII of 1869, s. 38, neither Collector nor Judge has any right to ascertain or record tenures or under-tenures of persons interested otherwise than as occupants KALEE NATH CHUCKERBUTTY v REILY . . 24 W. R., 272

25. —————— *Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10).*—S. 10, Bengal Act VI of 1862, contemplates the case of a proprietor of an estate who, by reason of inability to ascertain who are the persons liable to pay rent [illegible] each of the raiyats is simply with a view to harass and oppress them DWARKANATH CHUCKERBUTTY v. BHOWANEE KISHORE CHUCKERBUTTY 8 W. R., 12

26. —————— *Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10).*—A party applying under s. 10, Bengal Act VI of 1862, is entitled to measure only such lands as are comprised in his estate, and for which he is entitled [illegible] cover of that [illegible]

27. —————— *Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s 10)*—S. 10, Bengal Act VI of 1862, contemplates possession by the receipts of rents for those lands of which the measurement is applied for. PUREEJAN KHATOON v. BYKUNT CHUNDER CHUCKERBUTTY
[7 W. R., 96

28. —————— *Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10)—Combination of raiyats to withhold information.*—Where raiyats combine to withhold from the landlord information requisite to enable him to collect his due rents, one suit may be brought against a number of them, under s. 10, Bengal Act VI of 1862, for measurement and ascertainment by the Collector of the details of the tenures of each raiyat. SOLANO v. SOOBRON ROY . . . 6 W. R., Act X, 4

29. —————— *Necessary proof—Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10).*—An applicant under s. 10, Bengal Act VI of 1862, must first prove what steps he has taken to obtain the knowledge of the tenures

MEASUREMENT OF LANDS—*continued.*

in his estate, and that he is unable to measure because he is unable to ascertain them. If his averments are objected to, and the Collector proceeds without inquiry, the proceedings are invalid and without jurisdiction An applicant under the above section must be the proprietor of the estate, and not a shareholder only in the proprietary body MAHOMED BAHADOOR MOJOOMDAR *v.* RAJ KISHEN SING [15 W. R., 522 : 10 B. L. R., 401 note

30. ——— *Bengal Rent Act, 1869, s 38 (Beng Act VI of 1862, s. 10)—Enhancement of rent and resumption of rent-free lands.*—S 10, Bengal Act VI of 1862, was intended to assist a proprietor to measure the lands comprised in his estate when he cannot ascertain who the raiyats are, what lands are in their occupation, and what rents they have to pay, but not to enable him to

31. ——— *Necessary evidence—Beng. Act VIII of 1869, s. 38* —Before a

Affirmed on appeal under the Letters Patent. [25 W. R., 136

32. ——— *Right of auction-purchaser to measure—Beng. Act VIII of 1869, s 38* —Where an auction-purchaser at a sale for

33. ——— *Bengal Rent Act,*

SEFE MISSER *v.* CROWDY . 15 W. R., 243

MEASUREMENT OF LANDS—*continued.*

34. ——— *Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s 10)—Duty of Collector—Rate of rent, Determination of.*—The Collector's duty under Bengal Act VI of 1862, s 10, is to ascertain the actually existing rates of rent payable by the raiyat to the zamindar he has no jurisdiction to assess the rent at enhanced rates. CROWDY *v.* OMRAO SINGH . . 22 W. R., 476

RUTTOO SINGH *v.* CROWDY [22 W. R., 477 note

NEEM CHAND SAHOO *v.* RAM GHOLAM SINGH [24 W. R., 424

35. ——— *Bengal Rent Act*

upon that estate, but only to inquire how and by

jurisdiction to determine a title on which a cloud had been cast by his proceedings. WISE *v.* LAKHOO KHAN . . . . . 16 W. R., 50

36. ——— *Power of Collector—Assessment of rents—Bengal Rent Act, 1869,*

MAHOMED . . . I. L. R., 7 Calc., 69

S. C. RUPENNESSA BIBI CHOWDRANI *v.* ABEDUDDIN MAHOMED . . . 8 C. L. R., 73

37. ——— Fixing rates of rent—*Duty of Collector—Beng. Act VIII of 1869, s. 35*—

MEASUREMENT OF LANDS—*continued.*

final, and the matter was open to the Civil Court. JAMALOODDEEN HOSSEIN *v.* RAMADHEEN MISSER [25 W. R., 136

affirming on appeal under the Letters Patent, S. C. [24 W. R., 331

38. ———— *Duty of Collector—Bengal Rent Act, 1869, s. 38—Delegation of powers by Collector to Ameen.*—In a suit under s. 38, the Collector cannot delegate his powers to an Ameen or accept absolutely without reservation the whole report of that officer, and order assessment in accordance with the rates found by him; such report being only a part of the evidence to be taken into consideration. SHETUL SHAIKH *v.* HILLS [24 W. R., 184

39. ———— *Ameen deputed to measure, Duty of—Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10).*—An Ameen deputed [illegible]

40. ———— *Beng. Act VIII of 1869, s. 38—Power of Collector.*—Where an application is made to a Collector under Bengal Act VIII of 1869, s. 38, for the measurement of certain lands without any "special application" to him to determine the rates of rent, any proceedings regarding the rates of rent are inadmissible. CROWDY *v.* POORUN SINGH . . . . 22 W. R., 490

41. ———— Resistance to measurement—*Right to interfere—Intermediate tenant—Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10).*—The fact of a measurement and jamabandi [illegible]

42. ———— *Interference by third party—Duty of Collector—Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10).*—Where the progress of a measurement under s. 10, Bengal Act VI of 1862, is interfered with by a third party claiming the land, the proper course for the Collector is to hold his hand, leaving it to the parties to seek their remedy in the Civil Court. He cannot, however, make any order which will prevent the intervenor coming under s. 77, Act X of 1859. WISE *v.* BANSEE SHAHA . . . . 16 W. R., 51

43. Objections to measurement—*Bengal Rent Act, 1869, s. 38—Power of Collector in dealing with objections to measurement.*—*Quære*—After having commenced proceedings under s. 38 of Bengal Act VIII of 1869, has a Collector power to refer some of the objections taken to one Deputy Collector and some to another? OMED ALI *v.* NITTYANUND ROY . . . 24 W. R., 171

44. ———— *Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10)—Objections to measurement proceedings.*—Where a measurement under Bengal Act VI of 1862 was com- [illegible]

GOLUCK KISHORE ACHARJEE *v.* KESHA MAJHEE [15 W. R., 23

45. ———— *Measurement of chur lands according to agreement—Effect of error as distinguished from fraud—Omission to object to measurement at time it was taken.*—A superior owner of chur land, and his tenants, who held it in "howladari" tenure, agreed, with reference to alluvion and diluvion, that the chur should be measured from time to time, on notice, and that, unless the tenants should give a separate "daul kabulist" for the land found to be accreted, the superior owner should take possession of it. A measurement by the superio[illegible] and b[illegible] tenant[illegible] They [illegible] them by the superior owner for possession of alleged [illegible] Court to decide what the amount of the property was which the plaintiff was entitled to recover. ALIMUDDIN *v.* KALI KRISHNA TAGORE [I. L. R., 10 Calc., 895

[illegible] waste [illegible]

brought into cultivation by various raiyats, and the landlord is unable to ascertain which of the raiyats have appropriated such waste lands as part of their jotes. Before a measurement can be ordered under that section, it is necessary to establish by evidence the facts set out in the petition for measurement and to show that the lands sought to be measured are known, but that the tenants liable to pay rent in respect of such lands are unknown. LALLA CHEET LAL *v.* RAMDHUNI GOPE . I. L. R., 13 Calc., 57

47. ———— Measurement of chur lands—*Accretion to tenure—Measurement made in absence of tenants—Notice.*—Where a kabuliat stipulated that on the accretion to a certain howla of any new cultivable chur, a fresh measurement should be made of the chur and howla, and that excess rent should be paid for the excess land at a stipulated rate up to five drones, and at pergunnah rates for the

MEASUREMENT OF LANDS—*continued.*

residue in default thereof rent to be realized accord-

settled with others,—the kabuliatdar measured the howla and accreted chur without notice to the tenants and in their absence, then served on the tenants a notice thereof, and of the increased rent demanded, requiring them to appear within fifteen days and file a kabuliat for the said amount and rent, or that he would take khas possession. In a suit, amongst other things, for assessment of rent of the excess land, —*Held* that the tenants were not bound by the measurement made by the kabuliatdar in their absence. RAM COOMAR GHOSE *v.* KALI KRISHNA TAGORE

[L. R., 13 I. A., 116 : I. L. R., 14 Calc., 99

48. ———— Procedure—*Inquiry and evidence as to inability to ascertain tenants Beng. Act VIII of 1869, ss 38, 39—Appeal from order—Separate appeal*—The Court to which an application under s. 38 of Bengal Act VIII of 1869 is made on the

passed by the Civil Court under s 38, and the Collector has upon that order made his decision, raiyats

SIRKAR *v.* JOGUT KISHORE ACHARJEA

[13 C. L. R., 203

49.————— *Proof of conduct of proceedings in accordance with Act—Bengal Rent Act, 1869, s 38 (Beng Act VI of 1862, s 10)—Proceedings of revenue officers.*—Per JACKSON, J. —The High Court will not hold any person bound by the finding specified in Bengal Act VI of 1862, s 10, unless it is shown beyond a doubt that the proceedings of the revenue officers referred to have been conducted in strict accordance with the terms of that section. DINOBUNDHOO CHOWDHRY *v.* DINONATH MOOKERJEE . . . . 19 W. R., 168

50. ——— *Notice—Bengal Rent Act, 1869, s 38—Ex-parte orders—Proceedings for measurement of land.*—In proceedings under s. 38 of the Bengal Rent Law, Act VIII of 1869, the Collector should, as a rule, pass no order

TAP CHUNDER GHOSE

[I. L. R., 8 Calc., 848 ; 12 C. L. R., 407

51. ———— *Notice—Measurement of lands in order to enhance—Notice of enhancement—Act X of 1859, s. 26.*—An under-tenant

S C ETWAREE LUSHKUR *v.* JADUB CHUNDER HALDAR . . . . . 2 Hay, 593

52 ———— *Notice—Khasra or appraisement of land—Dannabandi tenant—Presence of tenant—Notice to tenant of khasra.*—In a suit for rent, where the quantity of land for which rent is claimed is in dispute, and the landlord produces as evidence a khasra or appraisement of the land, it is not necessary for him to show that the estimate was drawn up in presence of the defendant and was acknowledged by him; it will be sufficient if the defendant (a dannabandi tenant) had notice when the khasra was about to be made. HUREE NARAIN SINGH *v.* BELJEET JHA . 24 W. R., 125

53. ———— *Attendance of witnesses—Inquiry—Bengal Rent Act, 1869, ss 38, 40—Order that tenures have lapsed.*—The Collector, in proceedings for measurement of lands under s. 38 of Bengal Act VIII of 1869, cannot be said to have made a "due inquiry," and therefore

and no proceeding in the shape of a suit or appeal can find place until after the Collector has completed his measurement and record. CROWDY *v.* GOBURDHUN ROY . . . . 22 W. R., 491

55. ———— *Appeal—Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10)—Objection to measurement, Time for.*—In order to object to the proceeding of the Collector under s. 10 of Act VI of 1862, the proper course for the raiyat is to appeal to the District Judge, and not wait until the zamindar brings a suit for arrears of rent on the basis of the rate fixed by the Collector. HURRY SANKUR PATWARI *v.* RADHA CHOWDHOORY

[25 W. R., 348

56. ———— Decision of Collector—*Reconsideration of order—Right of appeal* - The decision of the Collector referred to in s. 39 of Bengal Act VIII of 1869 must be taken to include any order made under the preceding section in the course of proceedings before him, and the provisions in the latter section for obtaining a reconsideration of any order does not deprive any one of the right of appeal. RASHBEHARY GHOSE *v.* BAREODA PROSAD MOOKHOPADHYA . . . . . 7 C. L. R., 560

57. ———— Standard of measurement—

MEASUREMENT OF LANDS—*continued.*

58. ——————— *Bengal Rent Act, 1869, s. 41—Standard pole of measurement.*—The standard pole of measurement alluded to in s. 41 must mean a standard officially known, *i.e.*, known to the Collector. SHETUL SHAIKH *v.* HILLS [24 W. R., 184

59. ——————— *Power of Collector.*—The Collector is the depository of the standard pole of each pergunnah; and it is exclusively within his province to declare what the standard of such pole is. TARUCKNATH MOOKERJEE *v.* MEYDEE BISWAS . . . . . 5 W. R., Act X, 17

60. ——————— *Power of Col-* [illegible] *-ment—Ben-* [illegible] *VI of 1862,* [illegible] to measure [illegible] VI of 1862, [illegible] to fix with what pole the measurement is to be made, but such questions are to be reserved for after-proceedings, when any action is taken upon the result of such measurement. RAMANATH RAKHIT *v.* MUCHIRAM PARAMANIK . . . 3 B. L. R., Ap., 63

S. C. ROMANATH RAKHEET *v.* DHOOKHEE SHAM BHOOYA . . . . . . 11 W. R., 510

61. ——————— *Power of Collector.—Bengal Rent Act, 1869, s. 41 (Beng. Act VI of 1862, s. 11).*—The Collector has no jurisdiction in an application by the zamindar under s. 9, Bengal [illegible]

ALI . . . . . [illegible]

S. C. BROJO KISHORE SEIN *v.* KASSIM ALI [11 W. R., 562

62. ——————— *Power of Collector—Bengal Rent Act, 1869, s. 41 (Beng. Act VI of 1862, s. 11).*—*Per* KEMP, PHEAR, MITTER, and HOBHOUSE, *JJ.*—When the right of a proprietor to make, under s. 9, Bengal Act VI of 1862, a measurement of a tenure is disputed, solely on the ground that the pole with which the measurement is attempted to be made is not the standard pole of measurement of the pergunnah, as provided in s. 11, and the parties are at issue as to what is the length of the standard pole, the Collector has jurisdiction to inquire into and decide as to the true length of the standard pole. COUCH, *C.J.*, and BAYLEY and JACKSON, *JJ.*, *contra.* MANMOHINI CHOWDHRAIN *v.* PREMCHAND ROY [6 B. L. R., 1: 14 W. R., F. B., 4

63. ——————— *Power of Judge on appeal.*—A Judge on appeal has power under s. 9, Bengal Act VI of 1862, s. 9, to declare by what standard measurements are to be made. MACKINTOSH *v.* KOYLAS CHUNDER CHATTERJEE [W. R., 1864, Act X, 59

MEASUREMENT OF LANDS—*concluded.*

64. ——————— *Bengal Rent Act, 1869, s. 41 (Beng. Act VI of 1862, s. 11)—Measuring rod of tuppah.*—S. 11, Bengal Act VI of 1862, does not preclude the use of the standard measuring rod of a tuppah. SURBANUND PANDEY *v.* RUCHIA PANDEY . . . . W. R., Act X, 32

MEDAL.

——— **Taking pawn of, from soldier.**

See ARMY DISCIPLINE ACT, 1881, s. 156. [I. L. R., 10 Mad., 108

MEDICAL EXAMINATION.

See HINDU LAW—MARRIAGE—RESTRAINT ON, OR DISSOLUTION OF, MARRIAGE. [I. L. R., 1 All., 549

MEDICAL OFFICER.

——— **Remuneration for professional attendance.**—The amount of remuneration for the professional attendance of a medical officer on the family of a public servant in the absence of an express agreement should be determined with reference to the circumstances in each case, and the principle adopted by the Judge in estimating the amount, that reference must be had not only to present means, but [illegible]

year. RAWLINS *v.* DANIEL . . 2 Agra, [illegible]

MERCANTILE USAGE.

See CUSTOM . 7 Moore's I. A., 263
[I. L. R., 11 Mad., 459
I. L. R., 14 Mad., 420

MERCHANDISE MARKS ACT (IV OF 1889).

See CASES UNDER TRADE MARK.

——— **s. 2, cl. 4**—*Penal Code (Act XLV of 1860), s. 486—Selling books with counterfeit property mark—Goods.*—Books are the subject of trade, and are goods within the meaning of s. 2, cl. (4), of the Indian Merchandise Marks Act (IV of 1889); therefore, when a person sells books with a counterfeit property mark, he commits an offence under s. 486 of the Indian Penal Code. KANAI DAS BAIRAGI *v.* RADHA SHYAM BASACK [I. L. R., 26 Calc., 232

——— **ss. 6 and 7.**

See CRIMINAL PROCEDURE CODES, s. 403. [I. L. R., 23 Calc., 174

MERCHANT SEAMEN'S ACT (I OF 1859).

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MERCHANT SEAMEN'S ACT, 1859 . 4 Mad., Ap., 23 [7 Mad., Ap., 32

See MERCHANT SHIPPING ACT, 1854, s 243 [8 Mad., 85

See SHIPPING LAW—MARITIME LIEN [2 Hyde, 273 6 Bom., O. C., 138

———— 17 & 18 Vict, c. 104, ss. 243 (cls. 1 and 2), 288—*Merchant Shipping Act, 1854—43 & 44 Vict., c. 16, s. 10—Merchant Seamen's (Payment of Wages and Rating) Act, 1880—Imprisonment for desertion* —The amendment of cls 1 and 2 of s 243 of 17 & 18 Vict., c 104, by 43 & 44 Vict, c. 16, s 10, does not affect the liability of seamen in Calcutta to imprisonment for offences under s 83, cls. 1 and 2, of Act I of 1859 BRUCE v CRONIN . I L R., 12 Calc., 438

———— s. 111.

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS . . 1 Hyde, 195

———— ss. 201, 202.

See SHIPPING LAW—CERTIFICATES. [1 Mad., 270

MERCHANT SHIPPING ACT, 1854 (17 & 18 VICT, C. 104).

———— ss. 24, 26—*Applicability of Act to India as regards the rules of measurement—Act XIX of 1838, ss 4, 13—Act X of 1841—Temporary additions to open vessels—"Strake," Meaning of the term—Rules of measurement made by the Marine Department in 1873.*—The Merchant Shipping Act of 1854 (17 & 18 Vict, c. 104) applies,

MERCHANT SHIPPING ACT, 1854 (17 & 18 VICT., C. 104)—*continued.*

and X of 1841) or in the Merchant Shipping Act of 1854, the rules of measurement issued in 1873 by the Marine Department were *ultra vires*, so far as

———— ss. 43, 66.

SHIB CHUNDER DOSS v COCHRANE [Bourke, O. C., 388

[1 Ind. Jur., N. S., 65

3. ———— Shipping Master, Power of—

———— ss. 53, 55

See SHIP, SALE OF. [2 Ind. Jur., N. S., 251 1 Ind. Jur., N. S., 263

———— s 207—*Discharge of seaman—Power of Shipping Master, Bombay.*—The Shipping Master

RE LEWIS . . . 6 Bom., O. C., 42

———— s. 243.

See OFFENCE ON HIGH SEAS [I. L. R., 21 Calc., 782

———— *Act I of 1859, s. 83, cl. 5—Disobedience of commands by sailors.*—The Merchant Shipping Act, 1854, 17 & 18 Vict., c. 104, s 243 (*b*), has no application to British India The Act applicable to cases of continued wilful disobedience of lawful commands by sailors is Act I of 1859.

MERCHANT SHIPPING ACT, 1854 (17 & 18 VICT., C. 104)—*concluded.*

s. 83, cl 5 (c). IN THE MATTER OF THE PETITION OF REARDON . . . . . 8 Mad., 85

——— s. 267.

See OFFENCE ON HIGH SEAS.
[I. L. R., 21 Calc., 782

——— *Trial of British seamen for offences committed on British ship on the high seas—Procedure at such trial—Murder—Admiralty Courts—British seamen on British ship—Letters Patent, High Court, 1865, cl. 26—Case certified by Advocate-General.*—A British seaman who stood charged with the murder of a fellow-sailor on board a British ship on the high seas was tried by a Judge of the High Court under the Code of Criminal Procedure; the chief evidence against the prisoner being that given in the depositions of the captain and second officer of the ship, taken on commission; this evidence was admitted in evidence, and the prisoner was convicted and sentenced. It was objected that, under s. 267 of the Merchant Shipping Act of 1854, the prisoner ought to have been tried in every respect as though the trial had been held at the Central Criminal Court in London, and that the law of evidence to be applied was that prevailing in England. *Held,* on a case certified by the Advocate-General under cl. 26 of the Letters Patent, that the prisoner had been properly tried according to the ordinary practice of the High Court, and that the evidence was admissible against him. QUEEN-EMPRESS *v.* BARTON
[I. L. R., 16 Calc., 238

MERCHANT SHIPPING ACT, 1855 (18 & 19 VICT., C. 91).

——— s. 21.

See OFFENCE ON HIGH SEAS.
[I. L. R., 21 Calc., 782

MERCHANT SHIPPING ACT (25 & 26 VICT., C. 63)

——— s. 3.

See SHIP, SALE OF.
[I. L. R., 21 Mad., 395

——— (IV of 1875), ss. 3, 5, 6, 7, and 18—*Jurisdiction, Admiralty Courts—Board of Trade certificates—Incompetency or misconduct of holder—Statement of grounds.*—The powers conferred on Courts of Admiralty by s. 5 of Act IV of 1875, of investigating charges of incompetency or misconduct against the holders of Board of Trade certificates, is totally distinct from the power of enquiry into wrecks or casualties conferred on tribunals by the same Act. It is not correct to say that all the sections in Ch. II of Act IV of 1875 subsequent to s. 5 apply only to inquiries under that section; nor that the Courts mentioned in that section are the only Courts that can cancel a Board of Trade certificate, or report so as to enable the Local Government to cancel its own certificate. A special

MERCHANT SHIPPING ACT (25 & 26 VICT., C. 63)—*concluded.*

Court inquiring into a casualty under s. 3 has power, if all the provisions of the Act are duly complied with, to cancel a Board of Trade certificate, or to make a report to the Local Government, upon which the Government may cancel its own certificate under s. 18. In investigating charges of incompetency or misconduct under s. 5 of Act IV of 1875, it is not necessary, in order to give the Court jurisdiction, that such incompetency or misconduct should have occurred on or near the coasts of India. What is a sufficient "statement of grounds" within the meaning of ss. 6 and 7 of Act IV of 1875? IN RE THE "AVA" AND THE "BRENHILDA." GOVERNMENT OF BENGAL *v.* WHITTARD
[I. L. R., 5 Calc., 453: 5 C. L. R., 307

——— s. 5—*Proof of Board of Trade certificate.*—An investigation under Act IV of 1875, s. 5, into charges of incompetency or misconduct cannot proceed unless the person whose competency or con- [illegible]

MERCHANTS, LAW OF

See ENGLISH LAW . 13 W. R., 420

MERGER.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT.
[I. L. R., 7 Calc., 82

See LIMITATION ACT, 1877, ART. 47.
[I. L. R., 18 Bom., 348.

See MORTGAGE—MARSHALLING
[I. L. R., 13 Mad., 383
I. L. R., 15 Mad., 288

See MORTGAGE—REDEMPTION—REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM . . I. L. R., 14 Bom., 78

See MORTGAGE—SALE OF MORTGAGED PROPERTY—MONEY-DECREES ON MORTGAGES . . I. L. R., 9 All., 23

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES
[I. L. R., 16 Mad., 94

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT. . I. L. R., 21 Calc., 869

1. ——— Doctrine of merger—*Applicability of, to mofussil of India.*—*Quære*—Whether the doctrine of merger applies to lands in the mofussil in this country. WOOMESH CHUNDER GOOPTO *v.* RAJNARAIN ROY . . . 10 W. R., 15

It does not. SATI *v.* PUNCHANUN ROY
[25 W. R., 503

MERGER—*continued.*

2. ———— Collateral securities—*Promissory note—Mortgage—Registration Act (XX of 1866), s 52*—*B* executed and delivered to *A* a

[illegible]

3. — — Purchase by patnidar of zamindari rights—*Cessation of rent as patnidar*—The patnidar of a mehal which formed a portion of a zamindari purchased the zamindari rights in the mehal From the date of his purchase he paid no rent as patnidar *Held* that he could not set up his title as patnidar against his zamindari co-sharers in a suit brought by them for contribution PROSUNNO NATH ROY *v.* JOGUT CHUNDER PUNDIT [3 C. L. R., 150

4. ———— Merger of securities.—On the 5th *September* 1874 *R*, a *Hindu, and his sons borrowed* R5 000 from *V*, and mortgaged to him certain land, items 1, 2, and 3 On the 7th September 1874 *V* borrowed R5 000 from *R N*, and mortgaged his rights in items 1 and 2 and land of his own to *R N*. In 1877 *R N* bought at a sale in execution of a decree against *R* the share of *R* in the said items 1

[illegible]

due under his mortgage bond *V* pleaded that, as *R N* had bought *R*'s share in items 1 and 2, subject to the mortgages created by him, *R N*'s rights as mortgagee were merged in his rights as purchaser. *Held* that the claim of *R N* was not merged VENKATA *v.* RANGA I. L. R., 10 Mad., 160

5. ———— Patni interest, Merger of, in that of zamindar—*Co-sharers—Rent, Suit for—Land Registration Act (Beng Act VII of 1876)*,

[illegible]

to sale for arrears of rent, purchased it themselves During the existence of the patni a dar-patni had been created, of which *C* was in possession. *A* instituted a suit against *C* to recover arrears of rent

[illegible]

MERGER—*concluded.*

[illegible] ne plain- 's share vision of having (among others),—*Held* on second appeal that the right of the plaintiffs as patnidars did not merge in their right as zamindars, and that the Land Registration Act had therefore no application to the case, the plaintiffs being entitled to maintain the suit *quâ* patnidars JIBANTI NATH KHAN *v.* GOKOOL CHUNDER CHOWDRY . . I. L. R., 19 Calc., 760

MESNE PROFITS.

See CASES UNDER DECREE—CONSTRUCTION OF DECREE—MESNE PROFITS.

See CASES UNDER DECREE—FORM OF DECREE —MESNE PROFITS.

See HINDU LAW—STRIDHAN—DESCRIPTION AND DEVOLUTION OF STRIDHAN. [3 B. L. R., A. C., 121

See CASES UNDER INTEREST—MISCELLANEOUS CASES—MESNE PROFITS.

See CASES UNDER LIMITATION ACT, 1877, ART 109

See RIGHT OF SUIT—MESNE PROFITS.
[1 Ind, Jur., O. S., 83
2 C. W. N., 43
3 C. W. N., 279

———— Suit for—

See RELINQUISHMENT OF, OR OMISSION T

[illegible]

See RES JUDICATA—CAUSES OF ACTION.
[2 B. L. R., S. N., 16 : 10 W. R., 486
Marsh., 93
9 W. R., 594

See SMALL CAUSE COURTS, MOFUSSIL—JURISDICTION—MESNE PROFITS.
[2 N. W., 13
I. L. R., 18 Calc., 316
I. L. R., 22 Mad., 196, 196 note

See CASES UNDER SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—MESNE PROFITS.

MESNE PROFITS—*continued.*

——— Suit for, and for possession.

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.
[5 N. W., 172
4 B. L. R., F. B., 113
I. L. R., 9 Calc., 283
I. L. R., 3 All., 660
I. L. R., 19 Calc., 615
I. L. R., 11 Mad., 151, 210
I. L. R., 17 All., 533

See RES JUDICATA—RELIEF NOT GRANTED.
[I. L. R., 17 Calc., 968
I. L. R., 14 Mad., 328
I. L. R., 21 Calc., 252
I. L. R., 21 All., 425

See VALUATION OF SUIT—SUITS—MESNE PROFITS . . . Marsh., 165
[W. R., 1864, 327
I. L. R., 17 Calc., 704
I. L. R., 15 Bom., 416
I. L. R., 21 Mad., 371

1. RIGHT TO, AND LIABILITY FOR.

1. ——— **Suit for partition and account of right in joint estate.**—The sections of the

JOWAHIR SINGH . I. L. R., 14 Calc., 493
[L. R., 14 I. A., 37

2. ——— **vious to** *liability to partition, h* *(1882), s 244—Right of suit*—Although, as a general rule, no member of an undivided Hindu family can have any claim to mesne profits previous to partition, yet mesne profits may be allowed on partition where one member of the family has been

mesne profits subsequent to the institution of the suit, a party is at liberty to assert his right to such profits by a separate suit. S. 244, para 2, of the Code of Civil Procedure (Act XIV of 1882) expressly reserves such a right of suit. BHIVRAV *v.* SITARAM
[I. L. R., 19 Bom., 532

3. ——— **Right to mesne profits**—*Damages for being kept out of possession*—Regard being had to the constitution of the Courts of this

MESNE PROFITS—*continued.*

1. RIGHT TO, AND LIABILITY FOR—*continued.*

4. ——— *Period for which suit is pending.*—There is no objection to the award of mesne profits or interest during the whole period for which a suit is pending, however long that period may be. KAKAJI BIN RANOJI *v.* BAPUJI BIN MADHAVRAV . . . 8 Bom., A. C., 205

5. ——— *Legal owner*—

[1 Hay, 110

S. C. KHETTURMONEE DOSSEE *v.* GOPEEMOHUN ROY . . . 1 Ind. Jur, O. S., 83

6. ——— The right to sue for mesne profits is not transferable. DURGA CHUNDER ROY *v.* KOILAS CHUNDER ROY
[2 C. W. N., 43

7. ——— *Co-sharer claiming re-partition of his share.*—A co-sharer claiming re-partition of his share is not entitled to mesne profits unless so provided by the wajib-ul-urz CHUNDER SINGH *v.* NIRTO . . . . 3 Agra, 11

8. ——— *Co-sharers—Mortgage after foreclosure*—*A* obtained a decree declaring him entitled to possession under a mortgage of one-third of the property in dispute, with mesne profits. *B* subsequently obtained a decree against *A* and the other co-sharers for possession of the

decree. BISNOO CHUNDER BISWAS *v.* TOYLOCK NATH BANERJEE . . 6 W. R., Mis., 25

9. ——— *Co-sharers—Excess land.*—Plaintiff and defendant and certain others were co-sharers of an abad Each agreed to cultivate certain portions, and afterwards to give up any excess land cultivated by him. Defendant cultivated 399 bighas in excess of his share. Plaintiff sued him and got possession of the excess land on payment to the defendant of a compensation for the expense of cultivation, and then brought his suit for mesne profits *Held* that he was not, under the circumstances, entitled to mesne profits DEBNARAYAN DEB *v.* KALI DAS MITTER
[6 B. L. R., Ap., 70: 14 W. R., 397

affirming on appeal KALEE DOSS MITTER *v.* DEB NARAIN DEB . . . 13 W. R., 412

10. ——— *Persons not in actual possession*—*Right of suit.*—*Held* that, where the plaintiffs made over the management of their lands to their bankers, but did not part with the property in the lands, even for a temporary period,

MESNE PROFITS—*continued.*

1. RIGHT TO, AND LIABILITY FOR —*continued.*

they were entitled to maintain a suit for mesne profits against the defendants who trespassed on and occupied the lands whilst the estate was under the management of the bankers. RAMRUTTON RAE *v.* DWARKA DOSS . . . 2 N. W., 193

11. ——— *Decree-holder in possession—Rents due previous to his possession* —When a decree-holder obtains possession of an estate in execution, he is not at liberty to sue the raiyats for rents falling due before the date of his taking possession. His proper course is to sue the late wrongful possessor for mesne profits, including the rents. UMES CHANDRA *v.* SHASTEDHAR MOOKERJEE [3 B. L. R., Ap, 99

S. C. WOOMESH CHUNDER ROY *v.* MARKUND MOOKERJEE . . . . 12 W. R., 34

12. ——— *Mortgagor after redemption—Period between date of suit and execution of decree.*—A suit for redemption is no bar to a mortgagor afterwards suing the mortgagee, who has been in possession, for mesne profits due between the date of suit and the execution of the decree. GOUR KISHEN SINGH *v.* SAHAY FUKEER CHUND [7 W. R., 364

13. ——— *Redemption of usufructuary mortgage—Mortgagee refusing to give up possession*—An estate was mortgaged for R100; the mortgagee was put in possession, and it was stipulated that he was to enjoy the usufruct in lieu of interest, the mortgagor being entitled to redeem at any time on payment of the principal. When the mortgagor deposited the principal, the mortgagee [illegible]

such period as was not barred by the statute of limitation. *Held* also that plaintiffs were entitled to interest from the date of suit. LULEET SINGH *v.* ALI REZA . . . . 8 W. R., 322

14. ——— *Unlawful resumption by Government.*—Property which had been [illegible] s, on appeal, *Held* that [illegible] profits from [illegible] OOKERJEE *v.* [illegible] ., O. S., 48

15. ——— *Upanchowki of* [illegible]

six years [illegible]

SHIB KUMAR [illegible] [1 B. L. R., A. C., 167

16. ——— Liability for mesne profits —*Person declared to be in wrongful possession.*—A person declared by a decree to be in wrongful possession is liable for mesne profits, which may be recovered from any property in his possession. PEARUN *v.* AHMED ALI KHAN . 4 W. R., Mis, 7

JEY NARAIN *v.* TORABUN . 3 Agra, 216

HERA LALL THAKOOR *v.* GRIDHAREE LALL [8 W. R., 450

17. ——— *Bonâ fides.*—Parties in possession are liable for wasilat to the legal owners whom they keep out of possession, even though there was no *malâ fides* on their part. BYJNATH PERSHAD *v.* RADHOO SINGH [10 W. R., 486

18. ——— *Holder of property for another*—The mere possession by one [illegible] former [illegible] s liable [illegible] agree- [illegible] AHAM- [illegible] Mad., 107

19. ——— *Nature of possession—Trespasser.*—The plaintiffs, who were the [illegible] demise in 1865, that defendant No. 3, the then karnavan, had obtained in 1878 a decree for [illegible]

praying for possession. *Held* that defendant No. 1 was not a trespasser merely, and the plaintiffs were entitled to a deduction of the profits for the whole *period during which he was in possession in computing* the amount payable by them before they recovered the land. SANKARAN *v.* PARVATHI [I. L. R., 19 Mad., 145

20. ——— *Person preventing raiyats from paying rent.*—A lessor who prevents [illegible]

[illegible] W. R., 103

MESNE PROFITS—*continued.*

1. RIGHT TO, AND LIABILITY FOR —*continued.*

21. ——— *Keeping owner out of possession.*—A party who has been active in wrongfully keeping another out of the possession and enjoyment of property is liable for consequential damages, whether he derived any profit himself from the possession of the land or not. GHOOGLY SAHOO *v.* CHUNDER PERSHAD MISSER 21 W. R., 246

They should only be calculated for any period during which the defendant was active in keeping the plaintiff out of possession. INDURJEET SINGH *v.* RADHEY SINGH . . 21 W. R., 269

22 ——— *Person in wrongful possession without knowledge of defect in his title.*—*Held*, dissenting from a ruling of the late Sudder Court, that mesne profits are always recoverable from a person who has enjoyed them, even though he has been in *bonâ fide* possession without knowledge of the defect in his title. He would, if he tought with sufficient inquiry, have a remedy against his vendor. MUGUN CHUNDER CHUTTORAJ *v.* SURBESSUR CHUCKERBUTTY . 8 W. R., 479

23. ——— *Person in possession apparently of right afterwards legally*

BELL . . . . . 8 W. R., 172

24 ——— *Suit by purchaser with notice of defect of title, for reversal of sale.*—Where a purchaser, by the institution of a suit for the reversal of the sale, had full notice of the defect of his title, he was, on the reversal of the sale in that suit, held liable for mesne profits. UMAMOYI BURMONEA *v.* TARINI PRASAD GHOSE [7 W. R., 225

25. ——— *Vendor and purchaser—Sale by elder brother during younger brother's minority.*—A sale by an elder brother during a younger brother's minority having been set aside and the vendee ejected, the vendee alone, and not the vendor, whose connection with the property ceased with the sale, was held to be liable for mesne profits received and expended by the vendee whilst in possession. SHURUTCHUNDER DEY SIRCAR *v.* JADUBNARAIN NUNDEE . . . . 1 W. R., 80

26. ——— *Possession taken by third party after suit.*—About the time that judgment was given in plaintiff's favour for possession with wasilat, a third party, in satisfaction of some other claim against the defendant, attached and got possession of the land in dispute. A question arose

plaintiff might have executed his decree by removal of the party who had got possession under a title created by defendant subsequent to the institution of the suit, he had the means of recovering possession while defendant had not. Under these circumstances, defendant could not be held liable for the profits. HARADHUN DUTT *v.* JOYKISTO BANERJEE [11 W. R., 444

27. ——— *Obstruction to possession—Dispossession.*—Obstruction to possession may be the ground of a claim for damages, but it cannot support a claim for wasilat unless there has been dispossession and the claimant has been prevented from enjoying rents and profits. CHURN SINGH *v.* RUNGOO SINGH . . 15 W. R., 221

28. ——— *Joint judgment-debtors.*—As a general rule, a suit for wasilat will lie against parties who have been found in a previous suit for recovery of the land to have been in wrong-

wasilat. SUTTYA NUNDO GHOSAUL *v.* SUROOP CHUNDER DOSS . . . . 14 W. R., 76

29. ——— *Joint liability—Wrong-doers not in possession.*—The plaintiff purchased a house with land attached, and sub-let the property to his vendor, one of the defendants. The defendants having in collusion prevented his enjoying rent, he sued for rent, but on their intervention the suit was dismissed. He then brought a regular suit, and obtained a decree from the Civil Court for khas possession. In a suit to recover wasilat—*Held* that, although the defendants were not all in possession, yet, as they all continued to oppose the plaintiff's possession, they were jointly liable for the wasilat. SHAMASUNKER CHOWDHRY *v.* SREENATH BANERJEE [12 W. R., 354

30. ——— *Ijmali property* ... —In a suit to

and not merely formal, possession of the property at the hands of the defendants in execution of his decree. JHOONKEE PAUREY *v.* AJOODHYA DOSS. AJOODHYA DOSS *v.* LALLJEE PAUREY . 10 W. R., 218

31. ——— *Actual occupier and lessor.*—Where lands are wrongfully withheld from the rightful owner, not only the actual occupiers, but also the person who has leased the land to the actual occupiers, may be held to have

MESNE PROFITS—*continued.*

1. RIGHT TO, AND LIABILITY FOR —*continued.*

committed a joint trespass, and to be jointly liable for the damages caused by such trespass. *Doe v Harlow, 12 Ad. and Ell, 40,* followed MUDUN MOHUN SINGH *v.* RAM DASS CHUCKERBUTTY [8 C. L. R., 357

32. ——————— *Apportionment of liability* —Where intermediate holders combine wrongfully to keep an auction-purchaser out of possession, they must all be held liable for mesne profits: the Court need not apportion their liability in proportion to the extent of the property respectively held by them. RAM CHUNDER SURMAH *v.* RAM CHUNDER PAL . . . 23 W. R., 228

33. ——————— *Apportionment of damages between joint tort-feasors* —In a suit for mesne profits against a number of defendants who have been in possession of distinct portions of a newly-formed chur, and are proved to have no title thereto, it is competent to the Court, having regard to the provisions of the Civil Procedure Code, to apportion the damages payable by the defendants severally in respect of the portions held by them *respectively. Aliter,* where the *defendants have* jointly taken possession of a particular portion of such land. The reason for treating as joint tort-feasors all persons who have occupied portions of land ultimately found to belong to a neighbouring estate, and for applying the rule of contribution or apportionment between joint tort-feasors, is wanting in the case of a suit for mesne profits against a number of defendants who have taken

KUNJO BEHARY BASAK . . . 9 C. L. R., 1

34. ——————— *Assessment of liability for— Suit for mesne profits with several defendants.*—In a suit for mesne profits where there are several defendants, the liability of the several defendants should be assessed in proprotion to the amount of profits which each had derived from his wrongful possession. NAWAB NAZIM OF BENGAL *v* RAJ COOMAREE DEBEE . . 6 W. R., 113

COLLECTOR OF BOGRAH *v.* SHAMA SUNKUR MOJOOMDAR . . . . 6 W. R., 230

35. ——————— *Representative of debtor until sale of property taken in execution* —Where execution is ordered to be taken out against the estate of a deceased judgment-debtor, and the property is sold, the representative of the debtor cannot be called to account in execution for the mesne profits of the property while in his hands MUZHUR ALI *alias* SAT COWREE MEAH *v.* NAWAB NAZIM OF BENGAL . . . 7 W. R., 308

36. ——————— *Liability of ijaradar under an ijara granted by party in wrongful possession.*—A suit for mesne profits held to lie against a party who took an ijara pending litigation, though the decree for possession with profits was against the ijaradar's landlord BIDYAMAYA DEBIA CHOWDHRAIN *v* RAM LAL MISSER [8 B. L. R., Ap., 80: 17 W. R., 148

37. ——————— *Dispossession of usufructuary mortgagee.*—The plaintiff for a consideration obtained from the defendant a zur-i-peshgi lease which contained an undertaking that in the event of the plaintiff's possession being interfered with by the defendant, or the defendant's previous ticcadar, the defendant would pay back to the plaintiff his money with interest and profits The lower Appellate Court, finding that the plaintiff, after enjoyment for three years, had been turned out of possession by the previous ticcadar, gave the plaintiff a decree for the original money advanced, with interest and mesne profits for the unexpired portion of the lease. *Held* that mesne profits should not have been awarded KHERODHUR LALL *v.* DOOLEE CHUND [19 W. R., 424

38. ——————— *Decree-holder paying debt and taking possession from zur-i-peshgidar.*—Where a decree-holder, finding a zur-i-peshgidar in possession, paid the debt due by his judgment debtor to the zur-i-peshgidar, and entering into possession himself realized the rents, it was held that he could not demand wasilat from the judgment-debtor for the same period SHAM SOONDER KOOER *v.* RAJENDER MISSER . . 10 W. R., 390

39. ——————— *Beng. Regs. XV of 1793 and I of 1798.*—A granted a zur-i peshgi

mesne profits. They never got possession, but they

40. ——————— *Mortgagee in possession.*—A mortgagee in possession occupies a fiduciary position towards all the persons interested as proprietors in the mortgaged estate, and to all he is answerable for whatever mesne profits he may receive in excess of the amount which he is entitled to receive by law or agreement. And when some of

41. ——————— *Liability of mortgagor after decree for foreclosure.*—Where a mortgagee, after obtaining a decree for foreclosure,

MESNE PROFITS—*continued.*

1. RIGHT TO, AND LIABILITY FOR —*continued.*

21. ———— *Keeping owner out of posses*[illegible] wrongfully kee[illegible] enjoyment of [illegible] damages, whetl[illegible] the possession [illegible] v. CHUNDER PERSHAD MISSER 21 W. R., 246

They should only be calculated for any period during which the defendant was active in keeping the plaintiff out of possession. INDURJEET SINGH v. RADHEY SINGH . . 21 W. R., 269

22. ———— *Person in wrongful possession without knowledge of defect in his title.*—*Held*, dissenting from a ruling of the late Sudder Court, that mesne profits are always recoverable from a person who has enjoyed them, even though he has been in *bonâ fide* possession without knowledge of the defect in his title. He would, if he bought with sufficient inquiry, have a remedy against his vendor. MUGUN CHUNDER CHUTTORAJ v. SURBESSUR CHUCKERBUTTY . 8 W. R., 479

23. ———— *Person in possession apparently of right afterwards legally dispossessed.*—Where a defendant had, with apparent right, occupied newly-formed lands from which the plaintiff ejected him by establishing in a civil suit his superior title, the defendant was held liable to account to the plaintiff for those profits which the defendant had derived from the lands, and which the plaintiff, if he had been in possession, would himself have received. ABDOOL KUREEM BISWAS v. CAMPBELL . . . . . . 8 W. R., 172

24. ———— *Suit by purchaser with notice of defect of title, for reversal of sale.*—Where a purchaser, by the institution of a suit for the reversal of the sale, had full notice of the defect of his title, he was, on the reversal of the sale in that suit, held liable for mesne profits. UMAMOYI BURMONEA v. TARINI PRASAD GHOSE [7 W. R., 225

25. ———— *Vendor and purchaser—Sale by elder brother during younger brother's minority.*—A sale by an elder brother during a younger [illegible]

[illegible]

NUNDEL . . . . . 1 W. R., 90

26. ———— *Possession taken by third party after suit.*—About the time that judgment [illegible] son with [illegible] other cla[illegible] possessio[illegible] quently [illegible] liability [illegible] dant was [illegible]

Held th[illegible], Code of Civil Procedure, plaintiff might have executed his decree by removal of the party who had got possession under a title created by defendant subsequent to the institution of the suit, he had the means of recovering possession while defendant had not. Under these circumstances, defendant could not be held liable for the profits. HARADHUN DUTT v. JOYKISTO BANERJEE [11 W. R., 444

27. ———— *Obstruction to possession—Dispossession.*—Obstruction to possession may be the ground of a claim for damages, but it cannot support a claim for wasilat unless there has been dispossession and the claimant has been prevented from enjoying rents and profits. CHURN SINGH v. RUNGOO SINGH . . 15 W. R., 221

28. ———— *Joint judgment-debtors.*—As a general rule, a suit for wasilat will lie against parties who have been found in a previous suit for recovery of the land to have been in wrongful possession, and against them only. If the plaintiff has recovered a decree against several persons as joint wrong doers, he is not at liberty to single out one or more of them only as defendants in the suit for wasilat. SUTTYA NUNDO GHOSAUL v. SUROOP CHUNDER DOSS . . . . 14 W. R., 76

29. [illegible]

30. ———— *Ijmali property where defendants have divided estate.*—In a suit to [illegible]

their liability for mesne profits to that portion only of which they were in possession. *Held* also that the plaintiff [illegible] to such tim[illegible] and not mere[illegible] the hands of [illegible] JHOONKEE [illegible] BYA DOSS v [illegible]

31. ———— *Actual occupier and lessor.*—Where lands are wrongfully withheld from the rightful owner, not only the actual occupiers, but also the person who has leased the land to the actual occupiers, may be held to have

MESNE PROFITS—*continued.*

1. RIGHT TO, AND LIABILITY FOR —*continued.*

committed a joint trespass, and to be jointly liable for the damages caused by such trespass *Doe* v. *Harlow, 12 Ad and Ell., 40,* followed MUDUN MOHUN SINGH v. RAM DASS CHUCKERBUTTY [8 C. L. R., 357

profits: the Court need not apportion their liability in proportion to the extent of the property respectively held by them. RAM CHUNDER SURMAH v. RAM CHUNDER PAL . . . 23 W. R., 228

33. ——— *Apportionment of damages between joint tort-feasors*—In a suit for mesne profits against a number of defendants who have been in possession of distinct portions of a newly-formed chur, and are proved to have no title thereto, it is competent to the Court, having regard to the provisions of the Civil Procedure Code, to apportion the damages payable by the defendants severally in respect of the portions held by them respectively. *Aliter,* where the defendants have jointly taken possession of a particular portion of such land. The reason for treating as joint tort-feasors all persons who have occupied portions of land ultimately found to belong to a neighbouring estate, and for applying the rule of contribution or apportionment between joint tort-feasors, is wanting in the case of a suit for mesne profits against a number of defendants who have taken

KUNJO BEHARY BASAK . . 9 C. L. R., 1

34. ——— *Assessment of liability for—Suit for mesne profits with several defendants.*—In a suit for mesne profits where there are several defendants, the liability of the several defendants should be assessed in proprotion to the amount of profits which each had derived from his wrongful possession. NAWAB NAZIM OF BENGAL v. RAJ COOMAREE DEBEE . . 6 W. R., 113

COLLECTOR OF BOGRAH v. SHAMA SUNKUR MOJOOMDAR . . . . 6 W. R., 230

35. ——— *Representative of ... until sale of property taken in execution*

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MUZHUR ALI *alias* SAT COWREE MEAH v. NAWAB NAZIM OF BENGAL . . . 7 W. R., 308

33. ——— *Liability of ijaradar under an ijara granted by party in wrongful possession.*—A suit for mesne profits held to lie against a party who took an ijara pending litigation, though the decree for possession with profits was against the ijaradar's landlord. BIDYAMAYA DEBIA CHOWDHRAIN v. RAM LAL MISSER [8 B. L. R., Ap., 80: 17 W. R., 148

37. ——— *Dispossession of usufructuary mortgagee.*—The plaintiff for a consideration obtained from the defendant a zur-i-peshgi lease which contained an undertaking that in the event of the plaintiff's possession being interfered with by the defendant, or the defendant's previous

sion by the previous ticcadar, gave the plaintiff a decree for the original money advanced, with interest and mesne profits for the unexpired portion of the lease. *Held* that mesne profits should not have been awarded. KHERODHUR LALL v. DOOLEE CHUND [10 W. R., 424

38. ——— *Decree-holder*

debtor for the same period. SHAM SOONDER KOOER v. RAJENDER MISSER . . . 10 W. R., 390

39. ——— *Beng. Regs. XV of 1793 and I of 1798*—*A* granted a zur-i peshgi

C, and *D*, and obtained a decree for possession and mesne profits They never got possession, but they recovered the mesne profits from *A*. On the expiry of the lease, *C* and *D* were held, in a suit brought by them, entitled to redeem. *Held* the defendants were not liable, under Regulation XV of 1793 or I of 1798, to account for the mesne profits which they had recovered. WUZEERoonNISSA v. SAEEDUN [B. L. R., Sup Vol., 613: 6 W. R., 240

40. ——— *Mortgagee in possession*—A mortgagee in possession occupies a

to receive by law or agreement And when some of

41. ——— *Liability of mortgagee after decree for foreclosure.*—Where a mortgagee, after obtaining a decree for foreclosure,

MESNE PROFITS—*continued.*

1. RIGHT TO, AND LIABILITY FOR —*continued.*

sued for possession and mesne profits, and the mortgagor did not prove that he had given the plaintiff possession or directed his lessee to pay rent to the plaintiff *Held* that the mortgagor (defendant) was liable for wasilat from the date of foreclosure, so far as it was not barred by limitation. SUROOP CHUNDER ROY *v.* MOHENDER CHUNDER ROY 22 W. R., 539

42. ——— *Vendor and purchaser—Trustee for person out of possession.*—Where in a suit for partition it appeared that the

for the party kept out of possession. NIL KAMAL LAHURI *v.* GUNOMANI DEBI

[7 B. L. R., 113 : 15 W. R., P. C., 38

43. ——— *Ejectment of mortgagee's tenant of sir land by mortgagors.*—Where mortgagors had a right of occupancy in sir land, it was held that they could not be treated as trespassers for ejecting the mortgagees' tenant and

rent as might, having regard to the provisions of s 7, Act XVIII of 1873, be properly payable by them, they entered on the sir land and ousted mortgagees' tenant, they rendered themselves liable for mesne profits. BAKHAT RAM *v.* WAZIR ALI

[I. L. R., 1 All., 448

44. ——— *Ejectment and taking possession on expiry of lease without notice of ejectment—N.-W. P. Rent Act (XII of 1881), s 36.*—Where upon the expiry of the term of a lease, but without the written notice of ejectment required by s 36 of the N.-W. P. Rent Act having been given by the lessor, possession was taken and rents collected by persons claiming under a subsequent lease,—*Held* that the tenancy of the first lessee did not

... and justified in collecting the rents. SHITAB DEI *v.* AJUDHIA PRASAD

[I. L. R., 10 All., 13

45. ——— *Resumption by Government—Lakhirajdar—Fraud.*—In a suit for wasilat in respect of mal lands fraudulently included by the lakhirajdar with lakhiraj lands resumed by Government and after

due, interest had been properly awarded from date of suit. COOMAREE DABEE *v.* MAHTAB CHUND

[W. R., 1864, 380

MESNE PROFITS—*continued.*

1. RIGHT TO, AND LIABILITY FOR —*concluded.*

46. ——— *Assessment of mesne profits—Land out of jurisdiction.*—Where application was made for execution of a decree for possession with mesne profits of five mouzahs situated within the Court's jurisdiction, and Government revenue was so assessed upon these five mouzahs, and two other mouzahs situated in another district, that the amount paid on account of the five mouzahs and the two mouzahs respectively could not be apportioned, the Court had no jurisdiction to determine and award mesne profits for the two mouzahs not within its jurisdiction, but should have made an apportionment to the best of its ability. Nor ought the Court to have assessed the mesne profits by relying upon certain jamabandi papers made by the Government

47. ——— *Forfeiture of property—Liability of Government.*—Where property is confiscated by Government, it is only responsible for the profits

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS.

48. ——— Assessment of mesne profits—*Power of Court executing decree to assess mesne profits.*—A Court executing a decree has no power to assess mesne profits, unless it is ordered by the decree that the mesne profits are to be assessed in execution; and it is an essential part of a decree which orders mesne profits to be assessed in execution, to fix the period in respect of which such mesne profits are to be assessed. WISE *v.* RAJENDUR COOMAR ROY . . . . 11 W. R., 200

49. ——— *Order in execution of decree giving mesne profits not awarded by decree.*—An order, assumed to be made by a Court in execution, that the decree holder should have mesne

[I. L. R.,

50. ——— *Execution of decree—Decree silent as to date to which mesne profits are to run—Subsequent mesne profits.*—Where a decree is silent as to the date up to which mesne profits are to run, and merely gives a decree for possession with mesne profits, those mesne profits can only be reckoned, for the purposes of assessment in execution, up to the date of the institution of the suit. RAM MANICKYA DEY *v.* JUGGUTNATH GORE . . . . I. L. R., 5 Calc., 563

MESNE PROFITS—*continued.*

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*continued.*

HURONATH ROY *v.* INDRO BHOOSUN DEB ROY [6 W. R., Mis., 33

JANOKEE NATH MOOKERJEE *v.* RAJ KISTO SINGH [15 W. R., 292

51. ——— *Decree for possession—Civil Procedure Code, 1859, ss. 196, 197.*—A decree for possession was construed to include *mesne* profits where the High Court was satisfied that such was the intention of the Court which passed the decree. A decree of a Court should under ss. 196 and 197, Act VIII of 1859, state whether mesne profits are awarded or not, and it should distinctly state, when it reverses any points for subsequent inquiries in execution of the decree, what those points are. RAESOONISSA BEGUM *v.* SHARODA SOONDUREE CHOWDHRAIN 16 W. R., 25

52. ——— *Court with power to pass decree.*—Although the assessment of mesne profits is reserved for the period of execution of decree, it is an essential part of the decree itself, and not a mere process in execution, and must therefore be made by a Court authorized to pass the decree. MEHER JAN *v.* GERDA . 25 W. R., 270

53. ——— *Act XXIII of 1861, s. 11—Profits assessable by Court in execution.*—The mesne profits which, under the provisions of s. 11, Act XXIII of 1861, are assessable [illegible]

mined by the Court making the decree is not properly cognizable by the Court executing the decree. RAM LOCHAN *v.* MUNSOOR ALI CHOWDHRY [11 W. R., 339

54. ——— *Act XXIII of 1861, s. 11—Suit for mesne profits.*—Where no [illegible]

right thereto has been ascertained by the decree. SUBBA VENKATARA MAIYAN *v.* SUBRAYA AIYAN [4 Mad., 257

55. ——— *Decree silent as to mesne profits—Power of Court executing decree.*—Plaintiff sued for possession of certain lands and for mesne profits. He obtained a decree for possession, but the decree was silent as to mesne profits. *Held* that the Court executing the decree was not competent to entertain a claim for mesne profits made by the decree-holder. CHUNDER COOMAR ROY *v.* GONESH CHUNDER DASS I. L. R., 13 Calc., 283

56. ——— Suit for mesne profits—*Act XXIII of 1861, s. 11—Civil Procedure Code, ss. 196 and 197.*—Mesne profits are in themselves simply damages which do not exist as an obligation to be discharged until they have been awarded by a Court competent to do so. Therefore, according to s. 11, Act XXIII of 1861, mesne profits payable at the time of execution must mean mesne profits which have been at that time directed to be paid by a decree of Court. *A* obtained a decree against *B* for recovery of possession of certain property, and for mesne profits up to the date of the suit; but the decree was silent as to mesne profits after that time. *Held A* was not barred by the provisions of s. 11 of Act XXIII of 1861 from bringing a suit against *B* for mesne profits during the time that *A* was kept out of possession after the decree. HARAMOHINI CHOWDHRAIN *v.* DHANMANI CHOWDHRAIN [1 B. L. R., A. C., 138: 10 W. R., 62

HURCHURUN LAL *v.* TOORAB KHAN [2 N. W., 176

SHUM SHEER SINGH *v.* RAMJEEAWUN RAE [2 N. W., 416

ISSUR DUTT SINGH *v.* ALLUCK MISSER [7 W. R., 429

SHUMBHO MOHUN ROY *v.* TIRPOORA SUNKUR ROY [12 W. R., 126

57. ——— *Act XXIII of 1861, s. 11—Execution of decree—Decree for pos-* [illegible]

AMEER AHMUD *v.* ZAMEER AHMUD [18 W. R., 122

RAM ROOP SINGH *v.* SHEO GOLAM SINGH [25 W. R., 327

58. ——— *Decree for possession—Act XXIII of 1861, s. 11.*—*A*, in execution of a decree of the lower Court against *B*, obtained possession of certain land therein mentioned. On appeal by *B*, the High Court reversed the decree of the lower Court, and ordered restitution of the property to *B*; but no mention of mesne profits was made in the decree. *B* then sued for recovery [illegible]

59. ——— *Suit for possession—Civil Procedure Code, ss. 2, 7, and 196—Act XXIII of 1861, s. 11.*—The plaintiff brought a suit for possession of land with mesne profits. The suit was dismissed. He appealed on the question of possession only, and obtained a decree for possession

MESNE PROFITS—*continued.*

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*continued.*

without any mention of mesne profits; and afterwards, in execution of the decree, he obtained possession of the land. *Held* the plaintiff could afterwards bring his suit to recover mesne profits from the date of decree for the period of six years next before the commencement of the suit, exclusive of the period during which the plaintiff was in possession. Ss. 2 7, and 196 of Act VIII of 1859, and s. 11 of Act XXIII of 1861, were no bar to such suit. PRATAP CHANDRA BURUA *v.* SWARNAMAYI. SWARNAMAYI *v.* PRATAP CHANDRA BURUA

[4 B. L. R., F. B., 113 : 13 W. R., F. B., 15

60. ———————— *After suit for immoveable property where mesne profits are not* . . .

during the suit, a separate suit may be maintained for them. Where, however, it can be shown that the omission in the decree to provide for mesne profits was the deliberate act of the Court, the defendant may set that up as a defence in the separate suit. SITARAM AMRUT *v* BHAGVANT JAGANATH

[6 Bom., A. C., 109

61. ———————— *Profits between filing of plaint and execution of decree—Act XXIII of 1861, s. 11.*—Where a decree awarding possession of immoveable property is silent as to mesne profits accruing between the filing of the plaint and the execution of the decree, the Court executing the decree has no power to award such profits. The proper course for the plaintiff to adopt, under such circumstances is to apply to the Court which passed the decree for a review, or else to file a separate suit. *Jiva Patil Rahimna* v *Malukji Mani Nathuna, 3 Bom., A. C., 31,* overruled. RADHABAI *v* RADHABAI . . . . . 4 Bom., A. C., 181

CHOWDHRY IMDAT ALI *v* BOONYAD ALI

[14 W. R., 92

62. ———————— *Act XXIII of 1861, s. 11.*—A plaintiff in possession under a decree . . .

Court of first instance to make a further order. Plaintiff, however, instead of applying again for execution, instituted a fresh suit for mesne profits . . .

former suit. LAKSHMI NARASIMHALU *v.* CHATRAZU JAGANNADHAM PANTALU *alias* SRINIVASA RAU. EX-PARTE RUDDRAVARPU VISSAM RAZ *alias* KONAMARAZE . . . . . 3 Mad., 287

63. ———————— *Power of Court executing decree to assess mesne profits not decreed.* —Where a decree was silent as to the plaintiff's right to mesne profits after the date of filing the suit, and did not reserve any question of mesne profits for further investigation, the Court which executed the decree was held to have acted *ultra vires* in ordering an investigation into mesne profits which may have accrued due pending the suit and up to the time of execution. BROUGHTON *v.* PERHLAD SEN

[19 W. R., 154

64. ———————— *Act XXIII of 1861, s. 11—Separate suit—Question in execution of decree.*—*D* obtained a decree for an undivided share of certain property, but the defendants having apportioned the entire property amongst themselves and held each his own portion exclusively, *D* seized in execution a part of the share of one of them, *P.* On appeal the possession was ordered to be given up. *P then sued to recover mesne profits for the period* of *D's* possession. *Held* that the damages in question ought to have been sought in the execution proceedings when the possession itself was recovered, and not by the institution of a new suit; a Court being bound not only to place an aggrieved party back in the original position from which its erroneous action had displaced him, but also to give him compensation for such loss as he had thereby sustained. DULJEET GORAIN *v.* REWUL GORAIN

[22 W. R., 435

65. ———————— *Act XXIII of 1861, s. 11—Question to be decided in execution of decree.*—Certain decree-holders, having been sued successfully for possession by the judgment-debtors in the first Court, appealed to the High Court, who reversed the decision, and whose order was confirmed by the Privy Council. The decree-holders on this applied for execution and for mesne profits for the interval during which they had been kept out of possession. *Held* that they were entitled to what they claimed in execution without bringing a regular suit, as the effect of the High Court's decree was to replace the parties *in statu quo* UNUNT RAM HAZRAH *v.* KURALEE PERSHAD MISTREE

[23 W. R., 441

66. ———— **Assessment under Privy Council decree**—*Execution of decree of Privy Council—Decree for possession.*—When the Privy Council declares an appellant entitled to real property, of which he was out of possession, and directs the High Court to make the inquiry necessary to ascertain what is comprised therein, and to proceed in the suit as upon the result of such inquiry may appear to be just, the High Court, on being applied to for execution, ought, besides giving possession, to ascertain and award mesne profits up to the date of giving possession. LILANUND SINGH *v.* LUCKMIPUR SING . . . . . 5 B. L. R., 605

S. C. LEELANUND SINGH *v* LUCHMEESUR SINGH

[14 W. R., P. C., 23 : 13 Moore's I. A., 490

67. ———— **Assessment of mesne profits under Privy Council decree**—*Power of Court executing decree.*—The judgment of the Privy Council reported in *Leelanund Singh v. Luchmessur*

MESNE PROFITS—*continued.*

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*continued*

Singh, 14 W. R., P. C., 23 5 B L. R., 605, in no way militates against the Full Bench ruling in *Mosoodun Lall v Bekaree Singh, B. L. R, Sup Vol., 602 6 W. R., Mis, 109,* which laid it down that under s 11, Act XXIII of 1861, the Court executing a decree is not to determine whether mesne profits are to be awarded or not, but only the amount of such profits RAMKANYE GHOSE *v.* GOOROO PROSUNNO ROY . . . . 16 W. R., 30

68. ———— *Power of Court as to mesne profits in execution of decree—Decree of Privy Council executed by Courts in India.*—Where the Privy Council made an order in favour of a plaintiff, decreeing possession of certain property with mesne profits,—*Held* that the intention was to award such a sum as would compensate the plaintiff for his actual loss, and the decree therefore authorized the Courts of this country to consider and deal with the question of mesne profits as fully as a Court could which was charged with the duty of originally determining the merits of such a question between the parties to the suit The High Court accordingly awarded the amount of actual loss found to have been incurred in respect of each year, with interest thereon from each year to the date of the High Court's order. BUDLUN *v.* FUZLOOR RUHMAN [23 W. R., 449

69. ———— Mesne profits ...

Privy Council, although of opinion that, if the matter had been *res integra*, the provisions of the ...

construction of the law as binding. The plaintiff obtained a decree ...

respect thereof. An appeal against the decree having been brought by the defendant, execution was, from time to time, stayed by the Court on the defendant giving security, to abide the event of the appeal for the execution of the decree and for payment of the ...

... as these were not provided for by the decree, they could not, under s. 11, Act XXIII of 1861, be awarded in execution, but must be made the

MESNE PROFITS—*continued.*

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*continued.*

subject of a separate suit. *Held* by the Judicial Committee that ...

... given by the Court to s 11, since, even ...

S. C. in High Court, RAMALINGA PILLAI *v* SATTEASIVA PILLAI. . . . 7 Mad., 97

CHOWDHREE NAIN SINGH *v.* JAWAHUR SINGH [1 N. W., 167 : Ed. 1873, 248

BHOOBUNESSUREE CHOWDHRAIN *v.* MANSON [22 W. R, 160

ABDOOL ALI *v.* ASHRUFFUN . 25 W R., 215

70. ———— *Act XXIII of 1861, s 11.*—A decree of 1854 for possession and mesne profits, having been confirmed on appeal in February 1855 was duly executed ... when the mesne pro... Court of the Appel...

cution of the decree for R81, the balance of mesne profits. This application was disallowed, on the ground that there was no provision in the original decree awarding mesne profits, and that an agreement to which the decree-holder had referred was not forthcoming. *Held* that ...

... Act XXIII of 1861, to determine what ...

... competent Court to receive the mesne profits claimed. HURO SOONDERY DOSSEE *v* NOBOCOOMAR [11 W R., 325

71. ———— *Decree for possession without mesne profits—Mesne profits afterwards allowed.*—Where an auction-purchaser, who prayed for possession as well as mesne profits, obtained a decree for possession which said nothing about mesne profits, and no reason appeared why mesne profits should be refused, the High Court allowed mesne profits in execution KALEENATH DOSS *v.* RAJAH MEAH . . 22 W. R., 406

MESNE PROFITS—*continued.*

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*continued.*

72. ——— Question of amount of mesne profits—*Decree for possession with mesne*

[22 W. R., 526

73. ——— *Suit for pos-* ... *latter* ... *as to* ... *cedure* ... ch had virtually adjudged mesne profits to the claimant in the same judgment in which it decided that she was

... HAMMAD ABDUL MAJID *v.* MUHAMMAD ABDUL AZIZ [I. L. R., 19 All., 155 L. R., 24 I. A., 22

74 ——— *Mesne profits*

CHOWDHRY . . . . . 5 W. R., 42

75. ——— *Act XXIII of* ... t by ... t of ... in-

76. ——— *Suit for mesne profits of land taken in excess under decree and restored*—Where a decree-holder in execution takes possession of more land than is covered by the decree, and on an objection raised, and after inquiry made, the excess land is subsequently relinquished, the question of wasilat, being one which arises between the parties to the suit with reference to the execution of the decree, must, under Act XXIII of 1861, s. 11, be determined by the Court executing the decree, and not by a separate suit BAMA SOONDURFE DABEE *v.* TARINEE KANT LAHOOREE . 20 W. R., 415

See RADHA GOBIND SAHA *v* BROJENDER COOMAR ROY CHOWDHRY . . . 7 W. R., 372

77. ——— *Execution of decree for possession, Stay of—Right to mesne profits*—Execution of a decree for possession merely of certain land having been stayed, and the defendant, pending an appeal to the Privy Council, continued in possession by the High Court upon his giving security for the "due performance of such order as might be made by the Privy Council," the appeal was subsequently dismissed, no order being made as to

put in possession, and that the amount of such profits should be determined by the execution department. See, however, the case of *Forester* v. *Secretary of State, L. R., 4 I. A., 137.* GOBUN CHUNDER SIRKAR *v* LAIDLAY . . . 5 C. L. R., 189

78. ——— Decree for mesne profits—*Execution of decree made on compromise—Procedure—Possession.*—*B* sued his brother *C* for possession of certain lands. *B* and *C* came to an amicable settlement, one of the terms of which was that *C* during his life should retain possession of certain of the lands, and that after his death they should pass to *B*. A decree was given in accordance with the terms of the compromise. On *C*'s death, his widow refused to put *B* in possession of the lands *B* sought to obtain possession of the lands, with mesne profits, by executing the decree under the compromise against *C*'s widow. *Held* that he ought to proceed by regular suit. TARA MANI DASI *v.* RADHA JIBAN MUSTAFI

[6 B. L. R., Ap., 142 : 14 W. R., 485

79. ——— Reversal of decree—*Decree for possession — Mesne profits in execution of decree*—*N* obtained a decree against *A* for certain lands, and was put in possession of them in execution of the decree. On appeal the decree against *A* was reversed, and the lands were accordingly restored to him, but no provision was made as to the mesne profits received by *A* when he was in possession of the lands under the decree of the lower Court. In a ... such mesne ... he, and was ... I of 1861.

ABHRAM ALLI *v.* NATHA JALLAM 5 Bom., A. C., 74

80. ——— *Decree for possession—Execution of decree.*—*A* sued *B* and obtained possession of certain property under a decree. On appeal this decree was reversed. The judgment and decree of the Appellate Court made *no order* about mesne profits which had accrued during the

MESNE PROFITS—*continued.*

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*continued.*

time the land was in possession of *A*. *B* thereupon, seeking execution of the Appellate Court's decree, applied to be reinstated in possession, and also for an order awarding her mesne profits for the time during which she was out of possession of the said lands *Held* that, upon such application, it was competent for the Court to cause restitution to be made of all that the party against whom the erroneous decree had been enforced had been deprived of by such enforcement. LATI KOOER *v.* SOBADRA KOOER

[I. L. R., 3 Calc., 720 : 2 C. L. R., 75

81. ———— *Decree for possession of immoveable property—Reversal of decree*

obtained possession of the property. This decree was subsequently reversed on appeal by the defendant The decree of the Appellate Court was silent in respect of the mesne profits which the plaintiff had received while in possession The defendant instituted a suit to recover those profits *Held, per* PETHERAM, *C J*, OLDFIELD, BRODHURST, and DUTHOIT, *JJ*, that the suit was not barred by s 244 of the Civil Procedure Code, the question raised by such suit, although it might have arisen out of the decree of the Appellate Court, not "relating to the execution, discharge, or satisfaction of the decree" within the meaning of that section (because at that time no such question had arisen or was in existence), and therefore not one in respect of which a separate suit is barred by that section *Pertab Singh* v *Beni Ram, I. L. R., 2 All., 61*, distinguished by OLDFIELD, *J. Per* MAHMOOD, *J*—That the suit was not barred by s. 244, the mesne profits sought to be recovered not having been realized in execution of the decree

82. ———— *Decree for possession of immoveable property—Execution of decree—Reversal of decree on appeal—Mesne profits—Civil Procedure Code, s. 583*—*G* obtained a decree against *R* for possession of a house, and in execution thereof obtained possession. On appeal the decree was set aside by the High Court, whose decree did not direct that the appellant should be restored to possession and was silent as to mesne profits *Held* that, with reference to s 583 of

not, in execution of that decree, recover mesne profits GANNU LAL *v.* RAM SAHAI

[I. L. R., 7 All., 197

MESNE PROFITS—*continued*

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*continued.*

83. ———— *Execution of decree—Possession under decree—Restitution of property after reversal of decree—Civil Procedure Code, 1882, s. 244.*—A Court reversing a decree under which possession of property has been taken, has power to order restitution of the property taken possession of and with it any mesne profits which may have accrued during such possession. MOOKOOND LAL PAL CHOWDHRY *v.* MAHOMED SAMI MEAH

[I. L. R., 14 Calc., 484

84. ———— *Decree for possession of immoveable property—Reversal of decree on appeal—Suit for recovery of mesne profits from person who has taken possession under a decree which is subsequently reversed on appeal—Civil Procedure Code (Act XIV of 1882), s. 244*—A landlord sued his tenant for arrears of rent, and obtained

tenant appealed and succeeded in getting the decree set aside, and the amount found due from him for arrears by the first Court was reduced, and a decree made directing that, if the reduced amount were not paid within fifteen days, he should be ejected. He paid the amount found due by the Appellate Court within the fifteen days and recovered possession of his holding. He then brought a suit in the Munsif's Court to recover mesne profits from his landlord for the time he was in possession after the execution of the first Court's decree. It was contended on second appeal that the suit would not lie, as the matter might and should have been determined in the execution department under s 244 of the Civil Procedure Code *Quære*—Whether such a suit does not lie, and whether the decisions in *Lati Kooer* v. *Sahodra Kooer, 2 C. L. R., 75*, and analogous cases to the effect that such a suit does not lie, are correct. *Ram Ghulam* v. *Dwarka Rai, I L. R., 7 All., 170*, cited and approved AZIZUDDIN HOSSEIN *v* RAMANUGRA ROY . I. L R., 14 Calc., 605

85. ———— *Civil Procedure Code, s. 583—Claim for mesne profits on reversal of decree for possession of land executed.*—A decree for possession of immoveable property, having been executed, was reversed on appeal. The defendant applied under s 583 of the Code of Civil Procedure for restitution, of the mesne profits taken by the plaintiff. The lower Courts dismissed the application on the ground that the proper remedy was by suit *Held* that the defendant was entitled to the relief claimed. KALIANASUNDRAM *v* EZNAVEDESWARA

[I. L. R., 11 Mad., 261

86. ———— *Execution of decree in suit for possession—Execution pending appeal—Reversal of decree on appeal and restoration of possession—Right to restitution of mesne profits—Civil Procedure Code (1882), ss. 244 and 583—Separate suit.*—*R* brought a suit against *K* for

MESNE PROFITS—*continued.*

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*continued.*

possession of certain land, and obtained a decree. *K* appealed, but pending the appeal *R* took possession of the land in execution of his decree. *K* was successful in the appeal, and was restored to possession in execution of the decree of the Appellate Court, which, however, was silent as to mesne profits. In an application by *K* for mesne profits for the

either by reason of the power conferred by s. 583 of the Civil Procedure Code upon the Court which passed the decree (*Kaliannasundram* v. *Egnaredeswara, I. L. R., 11 Mad., 261*) or by reason of the inherent right that the Court has to order the restitution of the thing which had been improperly taken under the erroneous decree set aside in appeal. *Mookoond Lal Pal Chowdhry* v. *Mahomed Sami Meeah, I. L. R., 14 Calc., 484,* referred to. RAJA SINGH v. KOOLDIP SINGH I. L. R., 21 Calc., 989

87. ——— *Decree for possession and mesne profits for certain date to be fixed in execution—Civil Procedure Code, 1882,*

(Act XIV of 1882), and that mesne profits for more than three years from the date of the decree should not be awarded, even though possession was not delivered during that period. NARAYAN GOVIND MANIK v. SONO SADASHIV . . I. L. R., 24 Bom., 345

UTTAMORAM v. KISHORDAS [I. L. R., 24 Bom., 149

88. ——— Separate suit for mesne profits—*Decree-holder kept out of possession—Act XXIII of 1861, s 11.*—Mesne profits for the period during which the decree-holder was executing

89. ——— *Mesne profits*

pen-
s. 10,
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SINGH
[1 Agra, 141

RAM SHUNKER v. LALEE BAEE . 2 Agra, 268

SHUNKER LALL v. RAM LALL [1 N. W., 177: Ed. 1873, 256

90. ——— *Act XXIII of 1861, s 11—Mesne profits accruing after decree.*—Even with the permission of the Civil Court, a separate suit cannot be brought for mesne profits between the institution of the original suit and the execution of the decree thereon. Act XXIII of 1861, s. 11, commented on. CHENNAPA NAYUDU v. PITCHI REDDI . . . . . . 1 Mad., 453

NARAYANA AIYAN v. SRINIVASA AIYAN [2 Mad., 435

91. ——— *Prior suit for possession without mesne profits.*—A party can bring a suit for mesne profits after he has obtained a decree for possession in a prior suit, in which no provision had been made in the valuation of the suit for mesne profits. SHIVASUNDARI DEVI v. RAMSHAMAYAT KURMI . . . . 1 B. L. R., S. N., 3

3. MODE OF ASSESSMENT AND CALCULATION.

92. ——— Time for ascertaining mesne profits—*Execution of decree.*—Where wasilat is decreed, the mode of ascertaining it is rightly reserved for the proceedings in execution. GULB v. MAHARANEE SREEMUTTY . . . 15 W. R., 133

93 ——— Ascertainment of mesne profits—*Execution before all the mesne profits are ascertained—Power of Court executing decree.*—Execution may issue with respect to ascertained wasilat, pending inquiry as to unascertained wasilat. In ascertaining and declaring the amount of wasilat due under a decree, the Court executing it has no power to alter the decree in respect to interest awarded. ABEDUNNISSA CHOWDHRAIN v. KOKIBUNNISSA CHOWDHRAIN . . . 24 W. R., 444

94. ——— *Act XXIII of 1861, s 11—Criminal Procedure Code, 1859, s 196.*—A decree for possession and mesne profits must, with reference to s 196, Civil Procedure Code, 1859, be held to mean mesne profits down to the date of delivery of possession. Where the amount of mesne profits is not expressly admitted, the Court is bound to deal with it as if disputed, and either to determine the amount at the trial or to reserve it for assessment in execution. DHURAM NARAIN SINGH v. BUNDHOO RAM [12 W. R., 75

ABDOOLBUR . . . . . [illegible]

95. ——— *Power of Court executing decree.*—Where the suit is for mesne pro-

96. ——— *Construction of decree.*—Where a decree of the High Court simply

MESNE PROFITS—*continued.*

3. MODE OF ASSESSMENT AND CALCULATION—*continued.*

from which the defendants had wrongfully kept the plaintiff out of possession DWARKA LALL MUNDUR *v.* NIRUNDRO NARAIN SINGH . 22 W. R., 461

97. ———— **Mode of calculation of mesne profits**—*Decision of Court.*—The sum to be recovered in the case of a suit for mesne profits is of the nature of damages to be assessed by a proper exercise of the judicial discretion of the Court which is charged with the trial of the case on its merits, and it is impossible to lay down a rigid rule according to which those damages should always be calculated. HOGG *v.* DINONATH SREEMANEE 8 W. R., 447

98. ———— *Interest—Damages—Wasilat.*—Interest calculated upon yearly rests of rent may, when claimed by the plaintiff in his plaint, be given as an essential portion of the damages which are recoverable by a person wrongfully kept out of possession of immoveable property. *Protap Chunder Borooah v. Surnomoyee, 14 W. R., 151,* followed The term "mesne profits" does not

BROJENDRO COOMAR ROY *v.* MADHUB CHUNDER GHOSE . . . . I. L. R., 8 Calc., 343

See RAMDHUL SINGH *v.* PURMESSUREE PERSHAD NARAIN SINGH . . . . 7 W. R., 78

99. ———— *Interest, Loss of—Interest on mesne profits year by year*—The term "mesne profits" means the amount which might have been received from the land, deducting the

L. R., 9 I. A., 1

reversing, on appeal, the decision of the High Court in HURRO DURGA CHOWDHRANI *v.* SHAHRAT SOONDERY DABEA

[I. L. R., 4 Calc., 674: 3 C. L. R., 417

100. ———— *Profits obtained from land by ordinary diligence.*—Mesne profits mean those profits which the person in actual wrongful possession of the land did actually receive, or might with ordinary and due diligence have received, from that land DWARKANATH MITTER *v.* RAMDHUN BISWAS . . . 8 W. R., 103

DESILVA *v.* TEHERANEE . . 9 W. R., 374

101. ———— *Collections by wrong-doer in excess of what could have been collected ordinarily*—A decree-holder is entitled as mesne profits to whatever the wrong-doer has collected, though it be more than the decree-holder himself might have ordinarily collected. CHUNDER COOMAR ROY *v.* KASHEENAUTH ROY CHOWDHRY

[5 W. R., Mis, 37

MESNE PROFITS—*continued.*

3. MODE OF ASSESSMENT AND CALCULATION—*continued.*

102. ———— *Cultivation of lands by person in wrongful possession*—When a person in wrongful possession of land has himself occupied and cultivated it, the proper principle on

JEET KOOER B. L. R., Sup. Vol., 1003

S. C. ASMED KOOER *v.* INDURJEET KOOER

[9 W. R., 445

BINDABUN CHUNDER SIRCAR *v.* ROBERTS

[B. L. R., Sup. Vol., 1004 note

CHARDON *v.* AJEET SINGH 12 W. R., 52

TRIPOORA SOONDUREE DEBIA *v.* COOMAR PROMOTHONATH ROY . . . . 11 W. R., 533

BISHESSUREE DEBIA *v.* MOHUN CHUNDER BOSE

[5 W. R., Mis, 35

103. ———— *Proper principle of determining amount of damages.*—The plaintiffs obtained a decree for ejectment against the defendants on the 4th Bhadra 1293 F, but they did

upon which mesne profits should be assessed in cases like these is to ascertain what would have been a fair and reasonable rent for the land if the same had been let to a tenant during the period of unlawful occupation of the wrong-doer. *Asmed Koer v. Indurjeet Koer, 9 W. R., 445. B. L. R., Sup. Vol., 1003; Luchmessur Singh v. Chairman of the Darbhanga Municipality, L. R., 17 I. A., 90, at p. 97,* followed RAGHU NANDAN JHA *v.* JALPA PATTAP

[3 C. W. N., 748

104. ———— *Principle on*

titled to interest on such profits from the time at which they would have come to him if he had not been dispossessed LUCKHY NARAIN *v.* KALLY PUDDO BANERJEE

[I. L. R., 4 Calc., 882: 4 C. L. R., 60

105. ———— *Principle on which they should be assessed.*—In a case of wrongful dispossession, the principle upon which wasilat should be assessed is to ascertain what the actual rents or proceeds of the estate were, and to make the wrong-doer account for them to the party dispossessed, everything being assumed against the

MESNE PROFITS—*continued.*

3. MODE OF ASSESSMENT AND CALCULATION—*continued.*

wrong-doer. DOORGA SOONDUREE DEBIA *v.* SHIBESHUREE DEBIA . . . 8 W. R., 101

106. ——— ——— *Assets which might have been realized—Amount actually collected.*—Mesne profits are not limited to the amount actually collected from an estate by the judgment-debtor, but must be calculated according to the assets which might have been realized with due diligence SMITH *v.* SONA BIBEE . 2 W. R., Mis., 10

THAKOOR DOSS ROY CHOWDHRY *v.* NOBIN KRISTO GHOSE . . . . 22 W. R., 126

107. ——— *Claim in plaint —Rent not received, but which might have been received*—When a party is declared entitled to a decree for mesne profits, he is entitled not only to recover as those profits such sums as may have been collected and appropriated by others in wrongful possession, but also such sums as he would have collected had he been in possession, and which he has

entitled to recover in respect of rents not received, but which by the wrongful dispossession he has been prevented from collecting; but if there is an appropriate allegation, he will be entitled to recover in respect of such rents. KOMEFRUNNISSA BEGUM *v.* HUNOOMAN DOSS Marsh., 122: W. R., F. B., 40 [1 Ind. Jur., O. S., 42: 1 Hay, 266

108. ——— *Collection charges* – The principle on which wasilat should be assessed where defendant has been compelled to relinquish possession is, that he should be made to pay that which plaintiff (decree-holder) would have enjoyed if he had not been kept out of possession by the wrongful act of defendant. ERFOONISSA CHOWDHRAIN *v.* RUKEEBOONISSA . 9 W. R., 457

MOBARUK ALI *v.* BOISTUB CHURN CHOWDHRY [11 W. R., 25

109. ——— *Trespasser not allowed expenses of obtaining decrees for rent during the term of his possession.*—*Held* that a tres-

rent against tenants on the property in suit. SHARF-UD-DIN KHAN *v.* FATEHYAB KHAN [I. L. R., 20 All., 208

110. ——— ——— *Liability on ejectment of raiyat—Loss by dispossession*—A superior holder who dispossesses a raiyat is liable, not merely for the profit which he makes by letting out the land, but to make good the loss which the raiyat sustains by being dispossessed. HURUCK LALL SHAHA *v.* SREENIBASH KURMOKAR . . 15 W. R., 428

111. ——— *Cultivating raiyat ejected by zamindar.*—When a cultivating

MESNE PROFITS—*continued.*

3. MODE OF ASSESSMENT AND CALCULATION—*continued.*

112. ——— *Sale by occupancy-tenant—Decree in favour of land-holder against purchaser for mesne profits—Mesne profits how to be assessed.*—Where in a suit against an occupancy-tenant and his vendor, the zamindar obtained a decree for cancelment of the deed of sale, for possession of the land by ejectment, and for mesne

but the actual market value of the land for the purpose of letting. MATUK DHARI SINGH *v.* ALI NAQI [I. L. R., 10 All., 15

113 ——— *Rate of rent.*—In claiming wasilat for the period of wrongful dispossession, the owners are entitled to recover either any profit which the wrong-doer derived from the land or any rate of rent which they were receiving at the time of dispossession JOY KISHEN DOSS *v.* TURNBULL . . . 24 W. R., 137

114. ——— *Held* that the amount of rent actually received, together with that which might with reasonable diligence have been collected, form the amount of mesne profits to which a decree-holder is entitled. Evidence that the land was let for a certain amount is a *primâ facie* proof of the amount of mesne profits, and may be accepted by the Court unless the contrary be proved RUGHO NATH DOBEY *v.* HUTTEE DOBEY [1 Agra, Mis., 17

The onus being on the person in wrongful possession to show that the usual rents were not collected. OMAN *v.* RAM GOPAL MOZOOMDAR [18 W. R., 251

115. ——— *Proof of amount.*— ... execution of a decree are the ... ents, ... ats, ... ning ... held ... ssed, ... mpel ... the ... to

actual amount of mesne profits, and ... to produce his accounts, he will only have himself to blame if the amount awarded by the Court is larger than the actual mesne profits DINOBUNDHOO NUNDEE *v.* KESHUB CHUNDER GHOSE [3 W. R., Mis., 25

RAMNATH CHOWDHRY *v.* DIGUMBER ROY [3 W. R., Mis., 30

MESNE PROFITS—*continued.*

3. MODE OF ASSESSMENT AND CALCULATION—*continued.*

TELUCK CHAND BABOO *v.* SOUDAMINEE DOSSEE
[23 W. R., 108

116. ——— *Proof of actual collections.*—

dispossessed of

mesne profits

he was dispos

to prove the actual collections made during his dis-

BHAWANEE DEEN SAHOO *v.* MOHUN SAHOO
[1 N. W., 188: Ed. 1873, 273

117. ——— *Rents not received—Expenses of collecting rents.*—In estimating mesne profits, not merely the amount of rents actually received by the defendant, but also those which he might have received, and which can no longer be

. Marsh., 201: 1 Hay, 577

118. ——— *Failure of decree-holder to prove rate of rent*.—In estimating the amount of mesne profits where a decree-holder

119. ——— *Landlord and tenant.*—*Held* that the mode of estimating the amount of mesne profits in respect of a talukh held by plaintiff under defendant was to ascertain the amount of

[.. W. R., 251

120. ——— *Remission of rent or neglect to make collection.*—The rule for the

121. ——— *Gross produce of estate—Value of produce.*—Mesne profits should not be estimated on the gross produce of an estate except when all other means of ascertaining the n

122. ——— *Fair and reasonable rent.*—In a suit for possession and wasilat, where the plaintiff was the actual cultivator of the

123. ——— *Person not him-*

...THONATH ROY *v.* TRIPOORA SOONDUREE DABEE
[10 W. R., 463

124. ——— *Principle of assessment—Person cultivating land.*—A suit by a raiyat having been remanded with a view to the assessment of mesne profits on the principle laid down in *Sautamini Debi v. Anand Chandra Haldar, 7 B. L. R., 173 note; 13 W. R., 37,* if it was found that the plaintiff had himself cultivated the lands

followed the course indicated by the order of remand. *Held* also that the special respondent, if dissatisfied with the order of remand, ought to have applied for a

MESNE PROFITS—*continued.*

3. MODE OF ASSESSMENT AND CALCULATION—*continued.*

review, and not having done so he was not entitled to ask the Court to go behind that order and consider whether it was wrong with reference to *Madhub Chunder Dutt* v. *Haradhun Paul, 14 W. R., 294. Held* further that the later decision did not overrule the earlier one, but referred to a different case, *viz.*, that of a large zamindar entitled to rent only; and that the Full Bench ruling referred to in the later decision did not intend to lay it down that a party who is himself a cultivator is not entitled to recover the profits which he would have made out of the land by his own cultivation. NURSINGH ROY *v.* ANDERSON . . 19 W. R., 125

125. ——— *Zerayet and bhowli lands—Production of accounts to show value and produce of land.*—The loss of the party wrongfully kept out of possession must generally be mea- [illegible]

legal occupant whom the plaintiff claims to succeed to, if the plaintiff himself never entered into possession. A difference in assessment should be made between zerayet and bhowli lands, a deduction being allowed as to the former on account of expenses of cultivation. As regards the produce and value of the lands in such cases, it is the duty of the judgment-debtor to produce his accounts and to prove what were the real assets of the property. ROOKUMEE KOOER *v.* RAM TUHUL ROY . . . . . 17 W. R., 156

126. ——— *Suit by cultiva-* [illegible]

average season, making the deductions necessary on account of the bad seasons, expense of cultivation, rise and fall of prices, and cost of seed; and in the case of indigo, the value of the raw produce and not of the manufactured article;—it was held that the principle on which damages were awarded was a correct principle, where the plaintiff was himself a cultivator. WATSON *v.* PYARI LAL SHAHA [7 B. L. R., 175

SAUDAMINI DEBEE *v.* ANAND CHANDRA HALDAR [7 B. L. R., 178 note: 13 W. R., 37

127. ——— *Cultivator.*—Where the party recovering possession of land of [illegible]

SHISTEE PERSHAD CHUCKERBUTTY *v.* KUMLA KANT ROY . . . . . 17 W. R., 348

MESNE PROFITS—*continued.*

3. MODE OF ASSESSMENT AND CALCULATION—*continued.*

128. ——— *Amount which might have been received.*—Where one party illegally dispossesses another and lets his estate in farm, the amount of the rent which the party wrongfully ousted might have ordinarily received had he been in possession, and not the amount of the farm rents received during the wrongful possessor's incumbency, will, unless any special custom be proved, be the measure of mesne profits to be awarded. JUGURNATH SINGH *v.* AHMEDOOLLAH . 8 W. R., 132

129. ——— *Unprofitable lands.*—In executing a decree for mesne profits, a [illegible]

[9 W. R., 369

130. ——— *Value of produce of jalkar.*—In a suit for wasilat, where it was decreed that the value of the produce of a jalkar should be ascertained in execution, the lower Appellate Court was held to have come to a right conclusion without any error of law in taking the nearest approximate value of the produce indicated by the evidence and the plaintiff's statement. EVAET ALI *v.* SOBHNATH MISSER . . . 15 W. R., 258

131. ——— *Cancelment of darpatni tenure.*—A zamindar granted a patni to *A*, who granted a darpatni to *B*. The patni was sold for arrears of rent to *C*, who entered into possession, cancelled *B's* darpatni, and, after two years' possession, granted a darpatni to *D*. Meantime *A*, the original patnidar, had the sale set aside in a regular suit brought for that purpose, and thereupon *B* brought a suit against *D* alone for mesne profits. *Held* that *D* was entitled to be credited with the amount of rent which he had paid to his patnidar, *C*, and with the expenses of collection. NUFFAR ALI BISWAS *v.* RAMESHAR BHUNICK 3 C. L. R., 28

132 ——— *Decree-holder wrongfully kept out of possession.*—A decree-holder who stands in the shoes of his judgment-debtor, but who has been wrongfully kept out of possession of land for which the judgment-debtor granted a lease, is entitled to receive the profit which the judgment-debtor made out of them, and which the decree-holder would have made had he been in possession. GOOROO DYAL MUNDUR *v.* GOPAL SINGH [24 W. R., 272

133. ——— *Suit for mesne profits against trespasser—Costs and expenses of trespasser in collection of rent.*—*Held* by the majority of the Full Bench that a trespasser on the land of another should, in estimating the mesne profits which the owner of the land is entitled to [illegible]

MESNE PROFITS—*continued.*

3. MODE OF ASSESSMENT AND CALCULATION—*continued.*

of right; but where he has entered or continued on the land without any *bonâ fide* belief that he was entitled so to do, the Court may refuse to allow such costs, although he may still claim all necessary payments such as Government revenue or ground rent. *Per* STUART, *C.J.*—Whether such trespasser is a trespasser *bonâ fide* or not, he should be allowed such costs. ALTAF ALI *v.* LALJI MAL

[I. L. R., 1 All., 518

134. ———— *Allowance for extraordinary profits.*—Where a party is decreed entitled to mesne profits, the trespasser cannot be allowed to urge that the owner would not have ... trespasser) profits by allowance ... SREENATH BOSE *v.* NOBIN CHUNDER BOSE . 9 W. R., 473

135. ———— *Damages incurred by tenant in consequence of ejectment.*—A landlord who ejects his tenant illegally and holds possession as a wrong-doer, although he settles another tenant on the land, is liable, not only for the rent he receives under such possession, but also for the damages incurred by the tenant whom he has ejected, in consequence of the ejectment. MAHOMED AZMUL *v.* CHADEE LALL PANDEY . . 12 W. R., 104

136. ———— *Co-sharers—Decrees for and against different parties.*—The mode of calculating mesne profits in cases of decrees for and against each of the parties is to calculate ...

137. ———— *Co-sharers—Fair rent.*—Where the parties to a suit for certain land and for the payment of mesne profits in respect of the same were co-sharers in the estate comprising ...

GUNGA PROSAD *v.* GAJADAR PRASAD

[I. L. R., 2 All., 651

138. ———— *Costs of collection of rent.*—Where a suit is decreed as one for possession with mesne profits, the decree-holder is not barred from asking the Court, under s. 197, Civil Procedure Code, to inquire into the amount of mesne profits *in execution.* In decreeing mesne profits, a Court has no right to disallow the costs of collection on the assumption that a large zamindar can collect rents without costs. GOOROO DOSS ROY *v.* ANUND MOYEE DEBIA . . 15 W. R., 203

MESNE PROFITS—*continued.*

3. MODE OF ASSESSMENT AND CALCULATION—*continued.*

139. ———— *Mustagiri tenures.*—Where the custom of collecting rents from mustagirs prevails, the mustagiri jumma is to be the basis of account of mesne profits to be recovered from a judgment-debtor. AHMED REZAH *v.* ENAET HOSSEIN . . . . 1 W. R., Mis., 20

140. ———— *Rent left uncollected.*—In a suit for mesne profits the defendant cannot have credit for rents which he has left uncollected from the raiyats. MUHROOA *v.* HEERARAM MISSER . . . . 1 Hay, 277

141. ———— *Value of trees cut down—Decree for mesne profits.*—The value of trees cut down and appropriated by a judgment-debtor, against whom a decree with mesne profits has been given, may be included in the mesne profits for which the judgment-debtor, whilst in wrongful possession, is liable. BUNEED SINGH *v.* SUDASEEB DUTT . . . 2 W. R., Mis., 50

142. ———— *Surunjamee, upon what profits to be allowed.*—Surunjamee should be allowed upon the amount actually collected, and not upon the net proceeds coming to the zamindar. EBYOONISSA CHOWDHRAIN *v.* RUKEEBOONISSA . . . . 9 W. R., 457

143. ———— *Average of several years.*—Decree of Sudder Court estimating the amount of mesne profits from the average of two preceding years, as ascertained in a former suit (the evidence in the present suit being unsatisfactory on both sides), upheld. SOOBIAH ROW *v.* ENOOGUNTY SOOBIAH

[5 W. R., P. C., 125 ; 2 Moore's I. A., 12

144. ———— *Endowed lands—Expenses of worship.*—In the case of endowed ...

145. ———— *Mesne profits on accreted land—Presumption as to quantity of* ...

... on this question the appellants objecting to the amount of the mesne profits assessed by the Court ...

MILITARY COURTS OF REQUEST—*concluded.*

4. ———————— *Civil Procedure Code, 1859, ss. 114, 119.*—The Code of Civil Procedure, 1859, except so far as its provisions enact rules for appeals from Subordinate Courts, did not apply to proceedings under Act XI of 1841 (Military Court of Requests Act). These proceedings are regulated by the Act, and ss. 114 and 119 of the Civil Procedure Code do not apply. GUNSAM DOSS *v.* MOOLTAN MULL . . . . 2 N. W., 192

5. ———————— ss. 2, 17—*Persons beyond British territory.*—S. 2 and 17 of Act XI of 1841 ... amenable to ... British territ...

6. ———————— s. 17—*Decree by default on non-appearance of plaintiff.*—The term "rules in force" in s 17 of Act XI of 1841 is to be interpreted as equivalent to "rules for the time being in force." It is not competent for a Court of ...

[2 N. W., 240

MILITARY DECORATION.

———— Taking pawn of, from soldier.

See ARMY Act, 1881, s. 156.
[I. L. R., 10 Mad., 108

MILITARY OFFICER.

Se...

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MILITARY MEN.
[2 B. L. R., S. N., 3
2 Mad., 389, 439

See SUMMONS, SERVICE OF
[11 B. L. R., Ap., 43

MINISTERIAL OFFICER.

See APPEAL—ORDERS.
[3 B. L. R., A. C., 370
14 W. R., 328

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CIVIL CASES.
[19 W. R., 148
20 W. R., 470

1. ———— Appointment—*Act XII of 1856, s. 3—Civil Court Ameens.*—The High Court had no ...

2. ———————— *Act XVI of 1868*—*Power of Subordinate Judges.*—Act XVI of 1868

MINISTERIAL OFFICER—*continued.*

contemplated that the selection and appointment of ...

merely to the approval or disapproval of the person appointed. The latter's refusal of sanction must be based on grounds personal to the appointee; and he must not interfere and control the selection of persons so as to influence the inferior Judge towards the appointment of a particular candidate. IN THE MATTER OF THE PETITION OF OOLFUT HOSSEIN
[13 W. R., 197

3. ———————— *Act XVI of 1868, s. 9—Munsif's Court.*—Under s 9, Act XVI of 1868, the nomination and appointment of the ministerial ... the Munsif, ... If ... fuse ... n to appoint any other person. IN THE MATTER OF RAJ COOMAR GOOPTO . . . 11 W. R., 354

4. ———————— *Act XVI of 1868, s. 9—Appointment of serishtadar.*—In the matter of the appointment of a serishtadar in a Munsif's Court, it was held to be no irregularity or impropriety on the part of a Judge to call the attention of the Munsif to a circular order of the High Court communicating the wishes of Government that preference should be given to certain discharged officers. IN THE MATTER OF ANUND CHUNDER CHUCKERBUTTY
[14 W. R., 376

5. ———————— *Power of Judge to interfere with appointment of serishtadar by Munsif.*—Where a Munsif appointed a person as serishtadar in his Court and it did not appear that the person so appointed was in any respect disqualified for the appointment, or that his appointment was open to any sort of objection whatever, or that the Munsif had neglected any of the preliminary inquiries or formalities prescribed for such cases,—*Held* that it was not competent to the Zillah Judge, merely on the ground that in his opinion the claims of some ...

CHUNDER DEB . . . . . 7 W. R., 101

6. ———————— *Removal of officer* ...

CHATTERJEA . . . . . 7 W. R., 2..

7. ———— Removal—*Removal of mohurrir—Power of Zillah Judge.*—A Zillah Judge is not competent to remove a mohurrir from one Munsiff without any fault of his, and to subject him to los

MINISTERIAL OFFICER—*concluded.*

by requiring him to go to a distant Munsifi. IN THE MATTER OF HURRO GOBIND BISWAS [7 W. R., 246

8. ——— Dismissal—*Ground for dismissal.*—The fact of a ministerial officer carrying on a shop is not such an irregularity in his conduct as to justify his dismissal. IN RE KOMUL LOCHUN BHADOORY . . . . . 2 Hay, 674

9. ——— *Ground for dismissal.*—Private concerns of a ministerial officer need not generally be taken notice of by the head of a Court or office, but if they appear on the face of the record of a case to be such that he cannot be entrusted with any onerous duty, the head of that office or Court is justified in dismissing him from office. IN THE MATTER OF THE PETITION OF FEDDAH HOSSEIN . . . . . . 2 Hay, 677

MINOR.

See CASES UNDER ACT XL OF 1858.

See CASES UNDER COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE

See CASES UNDER GUARDIAN.

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY FATHER.

See CASES UNDER HINDU LAW—GUARDIAN.

See INSOLVENT ACT, s. 7. [I. L. R., 17 Bom., 411
I. L. R., 13 Calc., 68

See CASES UNDER LIMITATION ACT, 1877, s. 7.

See LIMITATION ACT, s. 19—ACKNOWLEDGMENT OF DEBTS
[I. L. R., 13 Calc., 292
13 C. L. R., 112
I. L. R., 17 Mad., 221
I. L. R., 18 Mad., 456
I. L. R., 20 Bom., 61
I. L. R., 23 Calc., 374
I. L. R., 26 Calc., 51

See CASES UNDER MAHOMEDAN LAW—GUARDIAN.

See CASES UNDER MAJORITY ACT.

See CASES UNDER MAJORITY, AGE OF.

See PAUPER SUIT—SUITS. [I. L. R., 3 Mad., 3
11 B. L. R., 373

MINOR—*continued.*

See PLAINT—FORM AND CONTENTS OF PLAINT—PLAINTIFFS
[I. L. R., 12 Calc., 48
17 W. R., 144
20 W. R., 453
10 Bom., 414

See PRACTICE—CIVIL CASES—NEXT FRIEND . I. L. R., 16 Calc., 771

See REGISTRATION ACT, 1877, s. 35.
I. L. R., 1 All., 465
L. R., 4 I. A., 166
I. L. R., 5 All., 599
I. L. R., 8 Calc., 967
I. L. R., 21 Calc., 872
I. L. R., 21 All., 261

See REVIEW—FORM OF, AND PROCEDURE ON, APPLICATION . 16 W. R., 231

See SUCCESSION ACT, ss. 2 AND 3.
[12 B. L. R., 358

——— Custody of—

See CRIMINAL PROCEDURE CODES, s 551.
[I. L. R., 16 Calc., 487

See CUSTODY OF CHILDREN.

See HABEAS CORPUS
[5 B. L. R., 418, 557
13 B. L. R., 160

——— Liability of, on contract.

See PLEADER—REMUNERATION
[I. L. R., 17 Mad., 306

——— Obtaining possession of, for purposes of prostitution.

See CASES UNDER PENAL CODE, ss 372, 373

——— Power of, to adopt or give permission to adopt.

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT ADOPT 15 W. R., 548
[I. L. R., 1 Calc., 289
I. L. R., 15 Bom., 565
I. L. R., 18 Calc., 69

——— Sale of share of—

See CASES UNDER HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS

See CASES UNDER HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION, ETC.

1. EVIDENCE OF MINORITY.

1. ——— Plea of minority, Determination of—*Personal appearance of minor.*—The plea of minority should be decided on positive evidence, and not merely on the appearance of the alleged minor. KHETTERMOHUN GHOSE *v.* RAMESSUR GHOSE . . . . W. R., 1864, 304

KALEE HALDAR *v.* SREERAM GHOSE
[W. R., 1864, 366

MINOR—*continued.*

2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS.

2. ——— Power to contract—*Necessaries—Authority to third person—Settlement of account.*—Minors have a qualified power of contracting, and an implied or express contract for necessaries is binding absolutely on a minor. As a minor cannot himself, by reason of insufficient capacity for business, state and settle an account so as to be bound thereby, so neither can he authorize another party to do for him that which he cannot do himself. BYKUNTNATH ROY CHOWDHRY v. POGOSE . 5 W. R., 2

[illegible]

...NATH DUTT . . . I. L. R., 11 Calc., 552

See HARI RAM v. JITAN RAM
[3 B. L. R., A. C., 426

4. ——— *Contract by a minor.*—A contract entered into with a minor is only voidable at the option of the minor. *Shashi Bhusan v. Jadu Nath Dutta, I. L. R., 11 Calc., 552,* followed. MAHAMED ARIF v. SARASWATI DEBYA
[I. L. R., 18 Calc., 259

5. ——— *Contract Act (IX of 1872), ss. 10 and 11—Suit on a bond passed to a minor.*—A money-bond taken by a minor is good in law, and may be sued on. HANMANT LAKSHMAN v. JAYRAO NARSINHA . I. L. R., 13 Bom., 50

6. ——— Purchase from minor—*Validity of purchase.*—A purchase from a minor is not *ipso facto* invalid. RENNIE v. GUNGA NARAIN CHOWDHRY . . . 3 W. R., 10

7. ——— Pre-emption—*Guardian.*—The [illegible]

[I. L. R., 3 All., 437

8. ——— Right of minor to contract—*Contract by a minor—Specific performance of* [illegible]

Dissented from in KRISHNASAMI v. SUNDARAPPAYYAR . . . I. L. R., 18 Mad., 415

MINOR—*continued.*

2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—*continued.*

and KHAIRUNNESSA BIBI v. LOKE NATH PAL
[I. L. R., 27 Calc., 276

9. ——— Capacity of minor to contract—*Law of domicile—Contract Act (IX of 1872), ss. 11 and 128—Suit on bond executed by minor and not ratified on his attaining majority—Liability of surety of minor.*—By the law of England, the question of the capacity of a person to enter into a contract is decided by the law of his domicile. This principle of English law is adopted by s. 11 of the Contract Act. A minor cannot be sued on a bond executed by him during minority, and not ratified by him after his majority. A surety to a bond passed by a minor for moneys borrowed for purposes of litigation not found to be necessary is liable to be sued on it, whether the contract of the minor is considered to be void or voidable. KASHIBA v. SHRIPAT NARSHIV
[I. L. R., 19 Bom., 697

10. ——— Bond executed by minor—*Necessaries—Suit against a minor on a registered bond executed by him for necessaries—Contract Act (IX of 1872), s. 68.*—On the 20th April 1886, a sum of money was advanced by *A* to a minor, who executed a bond in respect thereof and duly registered the same. The money was required by the minor to provide for his defence in certain criminal proceedings then pending against him on a charge of dacoity, and was used by him for that purpose. On the 18th June 1892 *A* instituted a suit against the minor for the amount due on the bond. It was urged on behalf of the minor, who had not attained majority at the time the suit was filed, that he was not liable to *A* for the amount advanced, that it was not advanced for "necessaries"; that he was not liable under the bond. *Held* that, the liberty of the minor being at stake, the money advanced must be taken to have been borrowed for "necessaries" within the meaning of s. 68 of the Contract Act. In such a case the bond being the basis of the suit, could not be ignored and treated as non-existent, and, on its being proved to have been executed by the minor in respect of money advanced for necessaries, the plaintiff was entitled to a decree. SHAM CHARAN MAL v. CHOWDHRY DEBYA SINGH PAHRAJ
[I. L. R., 21 Calc., 672

11. ——— Loans to a minor—*Inquiries necessary to be made by lender—Burden of proof.*—A plaintiff who has advanced money to relieve the necessities of a minor must make all reasonable inquiries as to the facts of such necessities, and [illegible] such [illegible] the [illegible] fact [illegible] her [illegible] such inquiries cannot thereafter successfully have recourse

MINOR—*continued.*

2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE CONTRACTS—*continued.*

to the minor's estate for the satisfaction of the debt. *Hanooman Pershad Pandey v. Munraj Koonweeree, 6 Moore's I. A., 393,* referred to. KANDHIA LAL *v.* MUNA BIBI　　I. L. R., 20 All., 135

12. ——— Capacity to contract—*Contract Act (IX of 1872), s. 10—Ratification—Release by minor father of his interest in joint property to his son—Family arrangement—Voluntary conveyance by father to son—Transaction impeached by subsequent creditors—Transfer of Property Act (IV of 1882), s. 7.*—*Per* FARRAN, C. J.,

[illegible]

son held to be valid if ratified by the donor after he attained majority. *V*, a minor member of an undivided Hindu family, in 1887 executed a release of his right and interest in certain ancestral property to his minor son. In 1892 the plaintiff obtained a decree against him in respect of a debt incurred subsequently to the date of the release, and he sought to attach the released property in execution of his decree. He impeached the validity of the release. *Per* RANADE, *J.*—The property sought to be protected by the release was admittedly ancestral property, and *V*'s minor son had a half share in it, of which the minor could at any time claim partition. The release was only intended to protect *V*'s one-half share against the consequences of his own improvidence. When all existing debts were paid off and settled, *V*'s right to make a voluntary conveyance of the same in his minor son's interest cannot be questioned. Such conveyances are well known in [illegible]

[illegible]

was not in force in the Presidency of Bombay when the release of 1887 was executed, a conveyance depends on a preceding contract, and cannot be valid unless the party making it is competent to contract. Without an antecedent agreement to give and receive, there can be no transfer at all. The power to convey must depend on the power to contract. Unless it can be held that the provisions of s. 10 of the Contract Act were not meant to be exhaustive and it was intended to leave out of consideration agreements by minors, we must hold that a minor [illegible]

[illegible]

been ratified by *V* after he attained his majority By FULTON, *J.*, on the ground that the release was absolutely void and incapable of ratification. *Per* FARRAN, *C.J.*, and RANADE, *J.* (FULTON, *J.*, dissenting)—The release was voidable only at the option of the minor (*V*), and was not void, and, if it was ratified or not repudiated by him on attaining majority, it was, in the absence of fraud, a valid transaction, at least as against judgment-creditors whose debts were of a subsequent date. SADASHIV VAMAN DHAMANKAR *v.* TRIMBAK DIVAKAR KARUNDIKAR . . I. L. R., 23 Bom., 146

13. ——— Mortgage by infant whether void or voidable—*Contract Act, s. 64—Evidence Act, s. 114—Misrepresentation.*—In a suit by

[illegible]

as to that,—*Held* (1) that in a suit by a puisne mortgagee upon his mortgage, a prior mortgagee is not a necessary party, if such puisne mortgagee offer to redeem his mortgage. When the validity of the prior mortgage is in question, the offer to redeem should be made conditionally on the establishment of such mortgage; (2) that the question of the validity of the prior mortgages can be determined in this suit between the co-defendants. The prior mortgages were executed

[illegible]

under that Act. The prior mortgagees thereupon contended (1) that under Act XL of 1858 a guardian of the person could not be appointed unless a certi[illegible]
there[illegible]
this [illegible]
was [illegible]
representation by the mortgagor as to his power [illegible]

[illegible]

MINOR—*continued.*

2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—*continued.*

L. R., 11 Calc. 552, *Mahomed Arif* v. *Saraswati Dabya, I. L. R., 18 Calc., 259*, doubted, and (4) that such rights as might be created under s. 64 of the Contract Act could not be enforced between the co-defendants in this suit. RAJ COOMARY *v.* PREO MADHUB NUNDY . . . 1 C. W. N., 453

14. ——— Liability of minor in equity —*Representations as to age known to be false—Action on the contract—Action framed in tort—Right of suit—Costs* —Where an infant obtained a loan upon the representation (which he knew to be false) that he was of age,—*Held* that no suit to recover the money could be maintained against him, there being no obligation binding upon the infant which could be enforced upon the contract either at law or in equity, but that the defendant should not be allowed costs in either Court. DHANMULL *v.* RAM CHUNDER GHOSE . I. L. R., 24 Calc., 265 [1 C. W. N., 270

15. ——— Fraudulent representation by minor that he was of age—*Mortgage*— A sum of money was advanced to a minor by a

infant *Dhanmull* v. *Ram Chunder Ghose, I. L. R., 24 Calc., 265*, distinguished and doubted. *Nelson* v. *Stocker, 4 De Gex & J., 458, per* Turner, *L.J.*, applied. SARAL CHAND MITTER *v.* MOHUN BIBI [I. L. R., 25 Calc., 371 2 C. W. N., 18, 201

law of estoppel as enacted by s. 115 of the Evidence Act (I of 1872) will not apply to an infant, unless he has practised fraud operating to deceive. A Court administering equitable principles will deprive a

advanced to an infant on a mortgage declared void is spent by him, then there is no benefit which he is bound to restore under the provisions of s. 64 of the Contract Act (IX of 1872). DHERMO DASS GHOSE *v.* BRAHMO DUTT . . I. L. R., 25 Calc., 616 [2 C. W. N., 330

MINOR—*continued.*

2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—*continued.*

Held (on appeal affirming the above decision)—S. 115 of the Evidence Act has no application to contracts by infants; but the term "person" in that section applies only to a person of full age and competent to enter into contracts. The words "person" and "party" in s. 64 of the Contract Act are interchangeable, and mean such a person as is referred to in s. 11 of that Act, *i.e.*, a person competent to contract. A mortgagor employing an attorney, who also acts for the mortgagee in the mortgage transaction, must be taken to have notice of all facts brought to the knowledge of the attorney; and therefore, where the Court rescinded the contract of mortgage on the ground of the mortgagor's infancy and found that the attorney had notice of the infancy, or was put upon enquiry as to it,—*Held* (affirming the decision of JENKINS, *J.*) that the mortgagor was not entitled to compensation under the provisions of ss. 38 and 41 of the Specific Relief Act. *Ganesh Lala* v. *Bapu, I. L. R., 21 Bom., 198*, dissented from. *Mills* v. *Fox, L. R., 37 Ch. D., 153*, distinguished. BROHMO DUTT *v.* DHARMO DAS GHOSE [I. L. R., 26 Calc., 381 3 C. W. N., 468

17. ——— Fraudulent representation by minor that he was of age—*Contract by minor.*—A minor representing himself to be of full age sold certain property to *A* and executed a registered deed of sale. The deed contained a recital that he was 22 years of age. *Held* in a suit by him to set aside the sale on the ground of his minority that he was estopped. GANESH LALA *v.* BAPU . . . I. L. R., 21 Bom., 198

18. ——— Enhancement of rent, Effect of—*Acts of mother and guardian how far binding on minor son—Kabuliat given by widow in possession to bind her son and successor to pay enhanced rent decreed against her.*—A patnidar obtained decrees for the enhancement of the rent of holdings in the possession of the widow of a deceased tenant, one decree being in respect of land formerly held by the latter, and the other in respect of a holding purchased by the widow, on behalf of her minor son by the deceased, whilst the enhancement suits were pending. The widow also signed kabuliats relating to both tenancies, agreeing, as mother of the minor, to pay the enhanced rent. *Held* that, as the patnidar was entitled to sue for enhancement, and it was not to be presumed that the mother held

& Co. *v.* SHAM LALL MITTER [I. L. R., 15 Calc., 8 L. R., 14 I. A., 178

19. ——— Mortgage—*Power of minor to take a mortgage.*—Observations by STUART, C.J., on the competency of a minor to take a mortgage. PEHARI LAL *v.* BENI LAL . I. L. R., 3 All., 408

MINOR—*continued.*

2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—*concluded.*

20. ——— *Act XL of 1858, s. 18—Guardian and minor—Mortgage without the sanction of the Civil Court—Void contract—Ratification by minor.*—A minor cannot ratify a mortgage of his immoveable property made by his guardian appointed under Act XL of 1858, without the sanction of the Civil Court, such a mortgage being under s. 18 of that Act void *ab initio.* MAUJI RAM *v.* TARA SINGH . I. L. R., 3 All., 852

21. ——— *Sale in execution of decree—Usufructuary mortgage—Right of purchaser.*—The acts of a minor are only voidable, and not absolutely void. The purchaser of the right, title, and interest of a judgment debtor sued to obtain immediate possession of the property purchased at a sale held in execution of a decree after setting aside

Held also that, until a transaction by a minor was avoided by some distinct act on attaining majority, it must be considered valid. HARI RAM *v.* JITAN RAM . 3 B. L. R., A. C., 426: 12 W. R., 378

See SASHI BHUSAN DUTT *v.* JADU NATH DUTT [I. L. R., 11 Calc., 552

3. LIABILITY FOR TORTS.

22. ——— **Responsibility of minor for his acts.**—As regards torts, a minor is responsible for his own acts. LUCHMON DOSS *v.* NARAYAN [3 N. W., 191

4. CUSTODY OF MINORS (ACT IX OF 1861, ETC.)

23. ——— **Right to choose custody**—*Habeas corpus, Return to.*—A girl under sixteen years of age has not such a discretion as enables her by giving her consent to protect any one from the criminal consequences of inducing her to leave the

GANESH SUNDARY DEBI . 5 B. L. R., 418

IN THE MATTER OF KHATIJA BIBI [5 B. L. R., 557

24. ——— **Application for custody of minor daughter**—*Act XL of 1858, s. 2—Principal Civil Court of original jurisdiction.*—An application was made to a Munsif for the custody of a minor daughter, which, on appeal to the Civil Judge, was dismissed. On appeal to the High Court,—*Held* all the proceedings must be quashed. The application should have been made in the principal Civil Court of original jurisdiction in the district. HARASUNDARI BAISTABI *v.* JAYADURGA BAISTABI . 4 B. L. R., Ap., 36

S. C. HURO SOONDUREE BOISTOBEE *v.* JOY DOORGA BOISTOBEE . 13 W. R., 112

KRISTO CHUNDER ACHARJEE *v.* KASHEE THAKOORANEE . 23 W. R., 340

25. ——— **Act IX of 1861**—*Construction*

KOOMAREE . 2 Ind. Jur., N. S., 193

S. C. RAM BUNSEE KOONWAREE *v.* SOOBH KOONWARE . 7 W. R., 321

27. ——— *European British minors, Custody of—Jurisdiction of Zillah Judge.*

to entertain the application IN THE MATTER OF THE PETITION OF SHANNON . 2 N. W., 79

28 ——— ss. 1, 3, 4—*District*

and that, even apart from s. 17 of the Code, the

not a minor, applies to persons applying under s. 1 of Act IX of 1861. Where the father of a minor was old and unable to work from age and weakness, and the

MINOR—*continued.*

4. CUSTODY OF MINORS (ACT IX OF 1861, ETC.)—*continued.*

ficate of guardianship. The words in s. 3 of Act IX of 1861, "and thereupon proceed to make such order as it shall think fit in respect to the custody or guardianship of such minor," confer on the Court an absolute discretion to make an order as to custody or

house of his elder brother by whom he had been maintained and brought up, appeared to be well able to take care of and provide for himself, and preferred to be left as he was, and had sufficient mental capacity to judge what was best for himself, the Court refused to make any order upon an application by the brother for his custody and guardianship. SARAT CHANDRA CHAKARBATI *v.* FORMAN [I. L. R., 12 All., 213

29. ——— s. 7—*Act XL of 1858, s. 12—Jurisdiction of Civil Court.*—Where application was made under Act IX of 1861, and an estate was taken charge of by the Collector under s. 12, Act XL of 1858, the interference of the Civil Court was held to be precluded alike by the former Act (s. 7) and by the latter. MOHESSUR ROY *v.* COLLECTOR OF RAJSHAHYE . 16 W. R., 263

30. ——— *Wife—Outcast for criminal offence.*—P, whose minor wife had refused to return to cohabitation with him on the ground that he was out of caste in consequence of having com- ... District Court ... f her person ... such a case. ... 3 All., 509

31. ——— *Wife—Dispute*

v. JANKI . . . . I. L. R., 3 All., 403

32. ——— *Jurisdiction of District Judge—Marriage—Injunction.*—The paternal uncle of a female Hindu minor, whose father ...

MINOR—*continued.*

4. CUSTODY OF MINORS (ACT IX OF 1861, ETC.)—*concluded.*

that the marriage had not in fact been validly performed. On appeal to the High Court, it was con- ...

Judge had jurisdiction. *Balmakund* v. *Janki, I. L. R., 3 All., 403, Wolverhampton Waterworks Co.* v. *Hawkesford, 28 L. J. (N. S.) C. P., 242*; and *Collector of Pubna* v. *Romanath Tagore, B. L. R., Sup. Vol. 630* referred to. *Held* also that for the ...

KASHI CHUNDER SEN [I. L. R., 8 Calc., 266 : 10 C. L. R., 91

5. REPRESENTATION OF MINOR IN SUITS.

33. ——— Disability to sue—*Objection* ... cannot sue ex- ...

34. ——— *Civil Procedure Code, s. 443—Defence of minority—Guardian ad* ... minority ...

SAIT . . . . I. L. R., 16 ...

35. ——— Disability to carry on suit —*Suit by minor—Next friend.*—Plaintiff being a minor, his suit was not dismissed, but he was directed to appoint a next friend to sue for him. ROLLO *v.* SMITH . . . . 1 B. L. R., O. C., 10

36. ——— Suit by minor whose guardian has omitted to sue.—A minor, when he ...

KYLASH CHUNDER SIRCAR *v.* GOOROO CHURN SIRCAR. GOOROO CHURN SIRCAR *v.* KYLASH CHUNDER SIRCAR . . . . 3 W. R., 43

37. ——— Suit on behalf of minor—*Act XL of 1858, s. 3—Suit of small value.*—A suit on behalf ...

by the brother of a minor on behalf of himself a

MINOR—*continued.*

5 REPRESENTATION OF MINOR IN SUITS —*continued.*

his minor brother, under Act XL of 1858, s. 3. NABADWIP CHANDRA SIRKAR *v.* KALINATH PAL [3 B. L. R., Ap., 130

38. ———— *Objection to minor's representative.*—Where a suit was brought by a manager, appointed by the Court of Wards on behalf of an infant who had a right to sue, an objection to the manager's authority was disallowed as merely technical. HARDI NARAIN SAHU *v.* RUDER PERKASH MISSER . . I. L. R., 10 Calc., 627 [L. R., 11 I. A., 26

39. ———— *Next friend of minor—Uncle representing minor nephew—Mahomedan law—Guardian.*—The rule of Mahomedan law that an uncle cannot be the guardian of the property of a minor, does not prevent an uncle representing his infant nephew, under the Code of Civil Procedure, as next friend in a suit. ABDUL BARI *v.* RASH BEHARI PAL . . 6 C. L. R., 413

40. ———— *Suit to set aside alienation affecting minor's interests—Mad. Reg. V of 1804, s 8—Manager appointed under Regulation—Collector—Next friend of minor.*—The holder of an impartible zamindari governed by the law of primogeniture, having a son, executed a mining lease of part of the zamindari for a period of twenty years by which no benefit was to accrue [illegible]

the suit as next friend of the minor The suit was one against the assignee of the lease to have the lease set aside. *Held* by PARKER, *J.*, that the plaintiff could sue by the Collector as his next friend, [illegible]

41. ———— *Married woman—Next friend—Civil Procedure Code (Act XIV of 1882), s. 445.*—A married woman may act as the next friend of an infant plaintiff. *Guru Pershad Sing* v *Gossain Munraj Puri, I. L. R., 11 Calc., 733,* overruled. ASIRUN BIBI *v.* SHARIP MONDUL [I. L. R., 17 Calc., 488

42. ———— *Suit by minor* [illegible]

[I. L. R., 21 Bom., 88

43 ———— A minor may sue or be sued in a Mamlatdar's Court in a suit for possession, if he is represented by a properly constituted guardian. SAIFULLA *v.* HAJI MAYA [I. L. R., 24 Bom., 238

44. ———— *Improper representation of minor—Effect on proceedings.*—Where [illegible]

With regard to the party acting as their next friend, the Court allowed her to withdraw the suit with liberty to bring a fresh suit, and returned the plaint. GURU PERSHAD SINGH *v.* GOSSAIN MUNRAJ PURI [I. L. R., 11 Calc., 733

45. ———— *Representation* [illegible]

an impartible estate by his father.—Representation by a Collector of all minor sons of a deceased zamin- [illegible]

Regulation V of 1804, the particular minor on whose behalf the Court of Wards was then managing the zamindari as their proper ward. Consequently, a suit brought by one of such minors, on his attaining majority, to set aside the sale of a portion of the zamindari property attached in execution of the decree given in the former suit is barred by ss. 13O, 244, and 312 of the Civil Procedure Code. SUBRAMANYA PANDYA CHOKKA TALAVAR *v.* SIVA SUBRAMANYA PILLAI . . I. L. R., 17 Mad., 316

46. ———— *Application for execution not being properly made—Objection not taken at proper time disallowed where minor afterwards properly represented.*—An application for execution of a decree was made, the applicant being a minor and being represented by a sub-manager [illegible]

47. ———— *Representation of minor by party not authorized to consent to decree—Invalid decree against minor on an alleged consent—Proof of authority to bind minor by*

MINOR—*continued.*

5. REPRESENTATION OF MINOR IN SUITS —*continued.*

consent—Beng. Reg. X of 1793—Manager of Court of Wards, Power of.—A decree-holder, who rests his case upon his decree having been made against a minor by consent, is under the necessity of proving that the consent was given by some one having authority to bind the minor thereby. In 1872, in the Settlement Court, a decree for land was made adversely to a minor, of whose persons, or for the suit, no guardian had been appointed. The minor's estate was under the charge of the Court of Wards, consisting, in the first instance, of the Deputy Commissioner of the district, who had appointed a

[illegible]

whether the consent had been competently given on the minor's behalf was upon the defendant in the present suit, who had obtained the decree upon it. Their Lordships were of opinion that it had not been

[illegible]

48. ———— *Wrongful admission of title against a minor—Suppression of facts by a manager appointed by the Court of Wards—Order of Settlement Court cancelled.*—At a settlement of a district in Oudh a sub-settlement was decreed in conformity with Act XXVI of 1866, which legalizes rules as to claims in respect of subordinate rights to land. The claimant alleged himself to be in virtue of a birt tenure held by him, under-proprietor of a village within the talukh of a

[illegible]

alleged birt-holder, and that he was [illegible] holder with him in the village, facts which the manager had suppressed, were facts proved in this suit. The defendants attempted, but failed, to establish by evidence the existence of the alleged birt. *Held* that the admission in the Settlement Court in 1871 was not binding on the plaintiff, and that, even assuming that the defendants' ancestor had been in some way in occupancy before 1857, the evidence was

[illegible]

RAM AUTAR *v.* MAHAMMAD MUMTAZ ALI
[I. L. R., 24 Calc., 853
L. R., 24 I. A., 107
1 C. W. N., 417

49. ———— *Guardian ad litem—Guardians and Wards Act (VIII of 1890), s 53—Civil Procedure Code, s. 443, as amended by s. 53 of Act VIII of 1890.*—S. 53 of Act VIII of 1890, amending the Code of Civil Procedure, ex-

[illegible]

decreed *ex-parte*, no one having appeared for the minor *Held* that the decree must be set aside, and the case sent back in order that the minor might be represented in accordance with law and the case retried DAKESHUR PERSHAD NARAIN SINGH *v.* REWAT MEHTON . . I. L. R., 24 Calc., 25

50. ———— *Ex-parte decree* [illegible] *set aside*

[illegible]

plaintiff, a minor represented by an administrator, sued to recover possession of two houses. With respect to one of the houses, there had been previous litigation. The plaintiff was the defendant, a minor represented by his guardian, and one of the present defendants was the plaintiff in that litigation, and an *ex-parte* decree was passed against the plaintiff. *Held* that the decision in the previous litigation barred the present claim with respect to the house which was the subject of that litigation, no negligence being proved on the part of the plaintiff's guardian therein. HANMANTAPA *v.* JIVUBAI
[I. L. R., 24 Bom., 547

See LALLA SHEO CHURN LAL *v.* RAMANANDAN DOBEY . . . . I. L. R., 22 Calc., 8

and CURSANDAS NATHA *v.* LADHAVAHU
[I. L. R., 19 Bom., 571

51. ———— Effect of decree in suit brought by elder brothers—*Manager.*—The plaintiffs, Hindu brothers, brought a suit for redemption. During the minority of the plaintiffs their elder brothers had brought a previous suit to redeem

MINOR—*continued.*

5. REPRESENTATION OF MINOR IN SUITS —*continued.*

the same property, which suit had been dismissed

52. ——— Suit against minor—*Parties—Guardian—Act XL of 1858, s 3—Declaratory decree.*—In a suit to set aside "the allegation of the defendant that her son S had been adopted by the father of the plaintiff, and had therefore inherited his property," the defendant was described in the plaint as *M*, the mother of *S*, and subsequently the words "a minor" were inserted after the name

S. C. MONGULA DOSSEE v. SHARODA DOSSEE [20 W. R., 48

53. ——— Sufficiency of representation—*Improper representation of minor—Suit for*

54. ——— *Civil Procedure Code, 1877, ss. 440, 444—Liability of pleader to pay costs.*—The plaintiff, who sued for confirmation of

plaint alleged that the plaintiff had held possession as guardian of the minor sons. *Held* that the proceedings were bad in law, the plaint not having been

MINOR—*continued.*

5. REPRESENTATION OF MINOR IN SUITS —*continued.*

framed in accordance with the provisions of

Procedure Code, to pay the costs of the suit and the appeal SHONAI BEWA v. MONORAM MUNDUL [11 C. L. R., 15

55. ——— *Civil Procedure Code (Act XIV of 1882), s. 440—Suit by next friend on behalf of minor—Act XL of 1858, s. 3—Certificate*—The effect of s 3 of Act XL of 1858, read with s. 440 of the Code of Civil Procedure, is, that a minor plaintiff must not only always sue by his next friend, but, when the suit relates to the minor's estate, the person representing the minor must either hold a certificate under the Act, or must obtain the sanction of the Court for the

See contra, AUKHIL CHUNDER v. TRIPOORA SOONDUREE . . . . . . 22 W. R., 525

56. ——— *Next friend—Certificate under Act XL of 1858, s. 3—Civil Procedure Code (Act XIV of 1882), s. 440.*—S. 440 of the Civil Procedure Code, read with s. 3 of Act XL of 1858, does not make the receipt from the Court of a written permission to sue compulsory upon the next friend of an infant plaintiff. NEWAJ v. MAKSUD ALI . . . . I. L. R., 12 Calc., 131

57. ——— *Insufficient appearance on behalf of infant—Succession Act, s. 261—Civil Procedure Code (Act X of 1877), Ch. XXXI, ss. 440-464—Act XL of 1858, s. 3.*—No

58. ——— *Suit on behalf*

MINOR—*continued.*

5. REPRESENTATION OF MINOR IN SUITS —*continued.*

second appeal that, although permission to sue or defend a suit on behalf of a minor should be formally granted, *to be of effect, such decision might fairly be* accepted as in this case a sufficient and effective

59. ——— *Permission of Court to guardian to sue—Discretion of Court—Act XL of 1858—Civil Procedure Code (Act XIV of 1882), s. 440—Return of plaint.*—A volunteer guardian has no right to sue on behalf of a minor; the accord or refusal of permission to sue is a matter in the discretion of the Court. Where a suit is brought in violation of s 440 of the Code of Civil Procedure, or of the provisions of Act XL of 1858, the proper course for a Court to pursue is to return the plaint, in order that the error may be rectified. RUSSICK DAS BAIRAGY *v.* PREONATH MISREE I. L. R., 10 Calc., 102: 12 C. L. R., 405

60. ——— *Act XL of 1858,*

been represented in a suit by a person who had obtained an order for a certificate under s. 3, but had not had it issued to him, the absence of a certificate was held to be not such an irregularity as entitled

61. ——— *Improper representation of minor—Appearance by a guardian not sanctioned—Act XL of 1858, s 3—Act VIII of 1859—Suit against minor—Presumption when no permission recorded by Court—Misdescription of minor—Act XIV of 1882, s 443.*—A suit was brought against a mother "for self and as guardian of *A* and *B*, minor sons of *C*, deceased," at a period when Act VIII of 1859 was in force. The mother had not taken out a certificate under Act XL of 1858, and no permission was recorded by the Court allowing the mother to defend on behalf of the infants under the provisions of s. 3 of that Act. A decree was made in the suit, and in execution thereof certain property belonging to *A* and *B* was sold and purchased by *X*, the decree-holder Subsequently on *A*'s coming of age, *A* and *B*, by *A* as his next

MINOR—*continued.*

5. REPRESENTATION OF MINOR IN SUITS —*continued.*

...ther *Held* ... was ... the mother to defend under s. 3 of Act XL of 1858; and that the fact of sanction having been given might be presumed by the Court, and that on the facts of the case such presumption was warranted. *Held* also that, though *A* and *B* were not properly described in the previous suit, it was a mere defect in form, and did not affect the merits of the case, being in accordance with the prevailing practice at the time when the suit was brought; and that there is no authority for saying that, when minors have been really sued, though in a wrong form, a decree against them would not be valid JOGI SINGH *v.* KUNJ BEHARI SINGH . I. L. R., 11 Calc., 509

62. ——— *Civil Procedure Code (1882), s. 440—Suit brought on behalf of a minor by a person other than the minor's certificated guardian—Minor not properly represented* —Where a suit was filed on behalf of two minors by a person who was not the certificated guardian of the minors, there being a guardian duly appointed by a competent Court in existence at the time, it was *held* that the suit was wrongly brought, having regard to s. 440 of the Code of Civil Procedure, and that the plaint should have been returned for amendment, and that the defect in the form of the suit was not cured by the fact, if it was one, that the person appearing therein as guardian of the minors was the karta of a joint Hindu family of which all the plaintiffs were members. *Beni Ram Bhutt v. Ram Lal Dhukri, I. L. R, 13 Calc., 189,* referred to. SHAM KRISHNA *v.* RAM DAS I. L. R., 20 All., 162

63. ——— *Objection to description of minor—Permission to sue, Proof of—Civil Procedure Code, ss. 440, 578—Act XL of 1858, s. 3.*—Although the proper and regular manner

... may be

fact of his not having been properly described in accordance with s. 440 of the Civil Procedure Code is no ground for setting aside a decree passed in the suit. BHABA PERSHAD KHAN *v.* SECRETARY OF STATE FOR INDIA . I. L. R., 14 Calc., 159

64. ——— *Error in the frame of a suit against a minor defendant, Effect of ... —Sanction*

presentation of the plaint the Court directed the

MINOR—*continued.*

5. REPRESENTATION OF MINOR IN SUITS—*continued.*

plaintiff to produce an affidavit to the effect that the mother of the minor defendant was his guardian, and an affidavit having been made that the "minor defendant" was under the guardianship of the mother, ordered a suit to be registered and summons to be issued on the defendants *N C* then filed a written statement, alleging that she held the land in suit on behalf of the minor. *Held* that, having regard to the order of the Court and the allegations made in the plaint and written statement, the suit was substantially brought against the minor, and the error of description in the plaint, being one of mere form, could not, without proof of prejudice, invalidate a

ex-parte was not necessarily fatal to the suit, unless it could be shown that the minor had in any manner been prejudiced thereby *Per* MITTER, J. (PETHERAM, C J, concurring), that, although the matter

65. ——— *Minor, Suit against—Misdescription in title of the plaint and in decree, Effect of.*—In a suit brought against a minor widow as the heir of her deceased husband, she was described in the cause title of the plaint as "the deceased debtor *R A*'s heir and minor widow *B D*'s mother and guardian *A D*." The plaintiff obtained no order for the appointment of a guardian

Jugut Chunder Deb, I. L. R., 14 Calc., 204, distinguished. GANGA PROSAD CHOWDHRY *v.* UMBICA CHURN COONDOO I. L. R., 14 Calc., 754

66. ——— *Decree against guardian of a minor—Immaterial irregularity—Error in description of defendant.*—In a suit by an

been passed, and that the present suit should be dismissed. NATESAYYAN *v.* NARASIMMAYYAR

[I. L. R., 13 Mad., 480

67. ——— *Suit in substance against minor—Sale-certificate, Irregular description in—Decree against widow representing her minor son—Decree, Sale of infant's share under.*—A sale-certificate expressed a rent-decree to have

Saran Moitra v. Bhubaneswari Debi, I. L. R., 16 Calc., 40 L. R., 15 I. A., 195, and *Suresh Chunder Wum Chowdhry v. Jugut Chunder Deb, I. L. R., 14 Calc., 204,* followed KEDAR PROSUNNO LAHIRI *v.* PROTAP CHUNDER TALUKHDAR

[I. L. R., 20 Calc., 11

68. ——— *Next friend—Suit filed by a minor without a next friend—*

appointed her next friend, and the plaint and

suit did not appear to be a vexatious one, and the plaintiff's age did not appear to have been fraudulently concealed, her father having stated on oath that he believed her to be of age and expressing

MINOR—*continued.*

5. REPRESENTATION OF MINOR IN SUITS —*continued.*

the minor to have himself properly represented in the suit by a next friend. ROTTON BAI v. CHABILDAS LALLOOBHOY . . . I. L. R., 13 Bom., 7

69. ——— *Mesne profits—Decree made against a widow representing estate, enforced against a minor adopted son, through*

to her deceased husband, was not made a party to an appeal which she preferred after the adoption,

estate being also thereupon divested, it would be right for her to continue to defend, but only as

decree of the Appellate Court, although he had not been made formally a party thereto. The principle of the decision in *Dhurm Dass Pandey v Shamasoondery Debia, 3 Moore's I A., 229,* referred to, and applied in this case *Held* also that the minor, by his adoptive mother as his guardian, was liable in a suit for mesne profits, brought after the decree upon title; it being made clear that the suit for mesne profits was substantially brought against the minor. *Suresh Chunder Wum Chowdhry* v. *Jugut Chunder Deb, I. L. R., 14 Calc., 204,* approved HARI SARAN MOITRA v. BHUBANESWARI DEBI

[I. L. R., 16 Calc., 40
L. R., 15 I. A., 195

70. ——— *Costs—Minor not represented by a next friend or guardian—Costs against such minor's estate—Application for leave* ... *Code (Act XIV*

s 441 nor 412
XIV of 1882)
make a minor's

on the ground that *A* was a minor, and that he was not properly represented by a next friend or

was clearly opposed to the provisions of s. 414 of the Code of Civil Procedure (Act XIV of 1882),

MINOR—*continued.*

5 REPRESENTATION OF MINOR IN SUITS —*continued.*

under which no order affecting a minor can legally be made without such minor being represented by a next friend or guardian *ad litem.* AMICHAND TALAKCHAND v. COLLECTOR OF SHOLAPUR

[I. L. R., 13 Bom., 234

71. ——— *Suit on behalf of a person alleged to be, but not in fact, a minor—Procedure to be adopted when suit is instituted through next friend on behalf of an alleged minor who is not so in fact—Plaint, Amendment of.*—When a suit is instituted by a person alleging himself to be a minor, and the suit is brought through a next friend, and when it is found that the plaintiff was not at the date of the institution of the suit in fact a minor, the Court should not dismiss the suit, as the defendant can be fully indemnified by the payment of his costs. In such a case the proper remedy is for the defendant to apply to have the plaint taken off the file or amended, and if it be not amended, the next friend's name may be treated as mere surplusage, and the suit be allowed to proceed. TAQUI JAN v. OBAIDULLA *alias* NANHE NAWAB

[I. L. R., 21 Calc, 866

NET LALL SAHOO v. KAREEM BUX

[I. L. R., 23 Calc., 686

72. ——— *Suit brought on behalf of a person alleged to be, but not in fact, a minor—Procedure on discovery that the plaintiff was of full age at the commencement of the suit.*—

alleged to
plaintiff of
and on thi
placed on
stating tha
institution of the suit. The affidavits, however, by

Taqui Jan v. Obaidulla, I. L. R., 21 Calc.
dissented from SHEORANIA v. BHARAT SINGH

[I. L. R., 20 All., 90

73. ——— *Representation by guardian of person, though not of estate—Bombay Minors Act (XX of 1864), s. 2—Decree binding minors.*—In execution of a decree against the estate of *V*, his estate was sold, and it ultimately came into the hands of the plaintiff as purchaser, who sued for partition. It was contended that two of the defendants, parties to the suit in which the decree was passed, being then minors, were not properly represented by their mother, *G*, also a party defendant to the suit, she not having obtained a certificate of administration under Act XX of 1864, and that the decree did not therefore bind them *Held* that s. 2 of Act XX of 1864 did not apply, as, though *G* had not obtained a certificate, she did not claim charge of the estate. *Vijkor v. Jijibhai Vaji, 9 Bom., 313,* and *Jadow Mulji v. Chhagan Raichand, I. L. R., 5 Bom., 306,* followed. *Held* also that an issue having been raised and determined in the suit in

MINOR—*continued.*

5. REPRESENTATION OF MINOR IN SUITS —*continued.*

which the decree was passed that *G* did represent the minors as guardian for the suit, and as the decree expressly named them as sued by *G*, their guardian, the minors were expressly made parties, and were properly represented by *G*. *Hari* v *Narayan, I. L. R., 12 Bom., 427*, and *Hari Saran Moitra* v. *Bhubaneswari Debi, I. L. R., 16 Calc., 40 L. R., 15 I. A., 195*, followed VASUDEV MORBHAT KALE *v.* KRISHNAJI BALLAL GOKHALE

[I. L. R., 20 Bom., 534

74. ———————— *Guardian ad litem, Appointment of—Act XIV of 1882, ss 443, 464 —Act XL of 1858, s 3—Minors, Suit against, improperly framed.*—In a suit intended to be brought against some minors, the defendants were set out in the heading of the plaint as "Sharoda Sunderi Debya, widow of Chundra Kanta Chuckerbutty, deceased, mother and guardian of the minors" (setting out their names) At the filing of the plaint, the plaintiff applied for and obtained an order making Sharoda guardian of the minors for the purposes of the suit. She was not, however, guardian of the property and persons of the minors under Act XL of 1858. *Held* that the minors were not parties to the suit, that the order making Sharoda

KISSEN TAGORE . I. L. R., 11 Calc., 102

75. ———————— *Suit against person of whose estate a certificate of administration is subsequently obtained—Right of guardian to defend.*—A suit having been instituted upon a bond

76. ———————— *Appearance for minor—Notice of decree—Presence of vakil.*—A

[25 W. R., 260

MINOR—*continued.*

5. REPRESENTATION OF MINOR IN SUITS —*continued*

77. ———————— *Civil Procedure Code, s 442*—S 442 of the Civil Procedure Code refers to a case where the plaint on the face of it appears to have been filed by a person who was a minor. BENI RAM BHUTT *v.* RAM LAL DHUKEE

[I. L. R., 13 Calc., 189

78. ———————— *Minor, when bound by proceedings against him—Minors Act (XX of 1864), s. 2—Suit by a minor one year after attaining majority, to recover property sold in execution of a decree obtained against him during minority*—In 1870 a creditor of the plaintiff's father brought a suit (No 573 of 1870) against the plaintiff, and obtained a money-decree against him. The plaintiff was then a minor, and his estate was administered by the Collector of Ratnagiri In this suit he was represented by his mother and guardian. At the sale held in 1871, in execution of the decree, the property in question was purchased by the defendant, who obtained possession in 1876. In 1879 the plaintiff attained majority, and in 1882 he brought the present suit to recover the property from the defendant. *Held* that the plaintiff was not bound by the proceedings in suit No. 573 of 1870, as he had not been properly represented as required by s. 2 of Act XX of 1864. VISHNU KESSHAV *v.* RAMCHANDRA BHASKAR

[I. L. R., 11 Bom., 130

79. ———————— *Decision of Survey Officers under Boundary Act (XXVIII of 1860)—Representation by Manager appointed under Mad Reg. V of 1804, s 8*—A Survey

80. ———— Costs — *Costs of defendants, Suit for—Necessaries—Contract Act, s. 68*—Where

81. ———————— *Next friend*—

MINOR—*continued.*

5. REPRESENTATION OF MINOR IN SUITS —*concluded.*

from the quondam minor, who, on coming of age, repudiates the proceedings, there being no relation of contract between them. Assuming that the legal proceedings were in the nature of necessaries, the next friend is the person responsible to the solicitor. *Watkins* v. *Dhunnoo Baboo, I. L. R., 7 Calc., 140,* distinguished BRANSON v. APPASAMI [I. L. R., 17 Mad., 257

82. ———— *Suit on behalf of minor by Court of Wards—Personal liability of officer representing Court of Wards—Choice between innocent persons.*—A suit on behalf of a minor by the Court of Wards, which was the Deputy

Deputy Commissioner was no longer in office, one of two innocent persons must bear the costs, either the minor or the defendant. It was determined accordingly that the defendant must suffer, as he was in part to blame for allowing the suit to proceed. BIKROMAJEET MULLO OGALSUNDO DEB v. COURT OF WARDS . . 21 W. R., 312

83. ———— *Suit by legatees on behalf of themselves and other legatees—Civil Procedure Code (Act XIV of 1882), s. 30—Costs*

such an order, the next friend was held liable for

ow that the

EEREEBALLA

[I. L. R., 11 Calc., 213

84. ———— Certificate of heirship—*Bom. Reg. VIII of 1827.*—Under the provisions of Regulation VIII of 1827, a certificate of heirship cannot be granted to a minor BAI BAIBA v. BAI DAGUBA . . I. L. R., 6 Bom., 728

6. CASES UNDER BOMBAY MINORS ACT (XX OF 1864).

See ACCOUNT, SUIT FOR
[I. L. R., 8 Bom., 14

See CASES UNDER GUARDIAN.

See SALE IN EXECUTION OF DECREE—DECREES AGAINST REPRESENTATIVES
[I. L. R., 5 Bom., 14

85. ———— Application of Act—*Minors resident out of Presidency*—The Bombay Minors Act (XX of 1864) does not apply to minors who are not resident within the Presidency of Bombay. MAGANBHAI PURSHOTAMDAS v. VITHOBA BIN NARAYAN SHET . . . 7 Bom., A. C., 7

MINOR—*continued.*

6. CASES UNDER BOMBAY MINORS ACT (XX OF 1864)—*continued.*

86. ———— *Alienation by a person not holding a certificate under the Act—Natural or de facto guardian—Charge of minor's person and property—Jurisdiction of Civil Court—Act XL of 1858.*—The Bombay Minors Act (XX of 1864) does not forbid the natural or *de facto*

HONAPA v. MHALPAI . I. L. R., 15 Bom., 259

87. ———— s. 11—*Construction—"May," "shall."*—The provision in s. 11 of the Minors Act (XX of 1864), that when the estate of a minor consists of land the Court "may" direct the Collector to take charge of the estate, is not obligatory. IN RE BOEVEY [I. L. R., 4 Bom., 635

88. ———— Nazir of Court—*Officer of Government—Bombay Civil Courts Acts (XIV of 1869, s. 32, and X of 1876, s. 15)—Collector—Public curator under Act XIX of 1841.*—The nazir of a Civil Court who is appointed guardian of the estate of a minor under Act XX of 1864 is not an officer of Government within the meaning of s. 32 of Act XIV of 1869 as amended by s. 15 of Act X of 1876 An officer of Government, in order to come within those enactments, must be a party to a suit

appointed as such under Act XIX of 1841.
ISHWAR v. HAKU RUPA I. L. R., 4 Bom., 638

Contra, VASUDEV VISHNU DIKSHIT v NARAYAN JAGANNATH DIKSHIT I. L. R , 4 Bom., 642 note

years of age, to eject the defendants from certain lands, belonging to the Chief, situated in the Satara District. The defendants raised a preliminary objection to the institution of the suit by the Political

a certain period could not give him the ... contemplated by the Bombay Minors Act (XX of

MINOR—*continued.*

6. CASES UNDER BOMBAY MINORS ACT (XX OF 1864)—*continued.*

90. ———— Natural father of minor—*Adoption—Residence of minor.*—The natural father

ment or incompetency on their part be proved, they and the survivor of them are the proper guardians. LAKSHMIBAI *v.* SHRIDHAR VASUDEV TAKLE [I. L. R., 3 Bom., 1

91. ———— Foreign guardian—*Suit by next friend.*—A foreign guardian will not be recog-

ordered that the proceedings should be amended by describing such agent as the next friend of the minor, in which capacity he was then permitted to sue. MAGANBHAI PURSHOTAMADAS *v.* VITHOBA BIN NARAYAN SHET . . . 7 Bom., A. C., 7

92. ———— Certificate of administration—*Father suing on behalf of minor son.*—A

93. ———— *Widow suing on*

94. ———— *Suit against*

for the appointment of an administrator, and it is competent to the District Judge, under s. 8 of the Act, to make that appointment. IN RE MOTIRAM RUPACHAND . . . . . 11 Bom., 21

95. ———— *Right to insti-*

appointment of a fit person to have charge of the property of the minor and to protect his estate, the proper course for a Court, to which a plaint on behalf of a minor is presented by his friend, is either to refuse to accept the plaint, when there is no pressing necessity for its acceptance, or in case such pressing necessity exists, to accept the plaint and stay proceedings until the plaintiff has duly obtained a certificate under the Act. VIJKOR *v.* JIJIBHAI VAJI . . . 9 Bom., 310

96. ———— *Suit against*

apply to the District Judge to appoint an administrator if none such has been appointed. DHONDIBA LAKSHUMAN *v.* KUSA . 6 Bom., A. C., 219

97. ———— *Guardian without certificate, Authority of, to represent minor in a*

DHIRAJRAM SADARAM . I. L. R., 12 Bom., 18

98. ———— *Guardian—Act XX of 1864, s. 2—Procedure—Civil Procedure*

of administration if the whole estate was of greater value than R250; and that it was competent to

SUPDU . . . . I. L. R., 3 Bom., 149

99. ———— *Next friend—Security of minor's estate—Act XX of 1864.*—

100 ———— *Hindu law—Joint family—Unseparated minor—Certificate of*

MINOR—*continued.*

6. CASES UNDER BOMBAY MINORS ACT (XX OF 1864)—*continued.*

their minor brother to set aside an alienation of the family property made by their deceased father. The Subordinate Judge ruled that one of the plaintiffs must procure a certificate of administration under Act XX of 1864, s. 2, before the suit could proceed. *Held* that no certificate was necessary. The manager of the family should be allowed to proceed with the *suit as next friend of the minor, with permission,* if necessary, to amend the plaint accordingly. NARSINGRAV RAMCHANDRA *v.* VENKAJI KRISHNA [I. L. R., 8 Bom., 395

101. ——— *Proceeding to enforce award—Civil Procedure Code, 1859, s. 327—Bom. Act XX of 1864, s. 2.*—As proceedings taken to file and enforce an award under s. 327 of the Civil Procedure Code are of the nature of a suit within the meaning of s 2 of Act XX of 1864, a minor must be represented in such proceedings by a person holding a certificate of administration VASUDEB VISHNU *v.* NARAYAN JAGANNATH 9 Bom., 289

102. ——— *Guardian—Guardian of property—Guardian of person—Necessity for issue of certificate of administration in order to complete appointment of guardian of property.*—The Bombay Minors Act (XX of 1864)

a guardian of the person The Act provides, in terms, for such an appointment being made, and no certificate of appointment is contemplated by the

minor of the age of eight years In 18?7 the plaintiff's maternal grandfather obtained a certificate of administration. On his death, an order of Court was made on the 21st March 1873, appointing the Nazir of the Court administrator of the property and the plaintiff's mother-in-law the guardian of the person of the plaintiff, but no fresh certificate of administration was granted. In 1880 the plaintiff brought the present suit against the defendants to recover from them the property left by her mother. The defendants contended (*inter alia*) that the plaintiff had attained her majority in 1874, when she arrived

of 1875) was applicable (except so far as its operation was excluded by s. 2), inasmuch as there was a guardian of the person of the plaintiff in existence both when she arrived at the age of sixteen and also when she was eighteen, and therefore the period of minority for her was extended to twenty-one years of age. YEKNATH *v.* WARUBAI [I. L. R., 13 Bom., 285

103. ——— *Act XX of*

PRANJIVAN *v.* BAI MULI . I. L. R., 1? Bom., ???

104. ——— *Bombay Minors Act, s. 12—Surety for guardian of a minor's estate—Release of surety—Contract Act (IX of*

the case *Quære*—Whether the surety may not apply to the Court for protection against the guardian. BAI SOMI *v.* CHOKSHI ISHVARDAS MANGALDAS . . . . I. L. R., 19 Bom., 245

MINORITY, DISABILITY OF—

See LIMITATION—STATUTES OF LIMITATION—ACT XXV OF 1857, s. 9. [13 B. L. R., 445

See LIMITATION—STATUTES OF LIMITATION—ACT IX OF 1859, s 20. [13 B. L. R., 292 L. R., 1 I. A., 167

See CASES UNDER LIMITATION ACT, 1877, s. 7.

See LIMITATION ACT, 1877, s. 8. [I. L. R., 10 Bom., 241 I. L. R., 13 Mad., 236 I. L. R., 16 Mad., 436

See LIMITATION ACT, 1877, ART 177. [I. L. R., 18 Mad., 484

See MADRAS REVENUE RECOVERY ACT, s. 59 . I. L. R., 17 Mad., 189

——— Evidence of—

See EVIDENCE ACT, s. 35. [I. L. R., 17 Calc., 849 I. L. R., 18 All., 478

MIRASIDARS.

See Cases under Landlord and Tenant —Mirasidars

See Landlord and Tenant—Nature of Tenancy . I. L. R., 17 Bom., 475
[I. L. R., 19 Mad., 485

MISAPPROPRIATION OF PROPERTY.

See Certificate of Administration—Effect of Certificate.
[5 B. L. R., 371

See Criminal Misappropriation.

See Receiver . I. L. R., 17 Mad., 501
[I. L. R., 18 Mad., 23
I. L. R., 20 Mad., 224
I. L. R., 27 Calc., 279

— — Damages for—

See Hindu Law—Joint Family—Sale of Joint Family Property in Execution of Decree, etc.
[I. L. R., 24 Calc., 672

MISCARRIAGE.

1. ——— Causing miscarriage—*Penal Code, s 312*.—The offence defined in s. 312 can only be committed when a woman is in fact pregnant Queen *v.* Kabul Pattur . 15 W. R., Cr., 4

2. ——— *Penal Code, s. 312* —"*With child*"—*Stage of pregnancy immaterial.* —A woman is with child within the meaning of s 312 of the Penal Code as soon as she is pregnant.

[I. L. R., 5 Mad., 305

3. ——— Attempt to cause miscarriage—*Penal Code, ss 312, 511*.—In a case in

together. Queen *v.* Arunja Bewa
[19 W. R., Cr, 32

MISCELLANEOUS PROCEEDINGS.

[11 W. R., 484

MISCHIEF.

See Attempt to commit Offence
[3 B. L. R., A. Cr., 55

See Complaint—Institution of Complaint and necessary Preliminaries.
[I. L. R., 21 Bom., 536

See Compounding Offence.
[I. L. R., 22 Bom., 889

See Offence relating to Documents.
[I. L. R., 12 Mad., 54

See Theft . I. L. R., 15 Calc., 388
[I. L. R., 17 Calc., 852

1. ——— Requisites for offence—*Penal Code, s 425*.—The authority vested in the Criminal Court of punishing persons for acts of mischief is one which must be exercised with great caution, and it must be very clear, before conviction, that the accused has brought himself within the meaning of s 425 of the Penal Code In the matter of the petition of Ram Gholam Singh
[6 W. R., Cr., 59

2. ——— *Probable consequential damage to other property.*—To constitute the offence of mischief according to the Penal Code, the act done must be shown to have caused destruction of some property or such a change in the pro- ... diminishes ... usly. The ... r property ... NONYMOUS
... Mad., Ap., 16

3. ——— *Penal Code, s. 426*

4. ——— Damage to non-existent right—*Penal Code, s. 425*—*Revenue sale*—*Damage done between date of sale and grant of certificate* —*Wrongful loss to property held under incomplete title.*—The damage contemplated in s 425 of the Penal Code need *not necessarily consist in the infringement* of an existing, present, and complete right, but it may be caused by an act done now with the intention of defeating and rendering infructuous a right about to come into existence. Any person who contracts to purchase property, and pays in a por ... in ... ple ... des ... wrongful loss or damage within the meaning of s 425. Dharma Das Ghose *v.* Nusseruddin
[I. L. R., 12 Calc., 660

5. ——— Invasion of right causing wrongful loss—*Penal Code (Act XLV of 1860), ss. 311-425*—*Wrongful restraint.*—Where complainant had for the purpose of removal placed

MISCHIEF—*continued.*

certain goods upon a cart, and accused came and unyoked the bullocks, and turned the goods off the cart on to the road, and complainant thereupon went away at once leaving them there,—*Held* that, under these circumstances, a conviction under s. 341 of the Penal Code could not be sustained; but that there was such "mischief" as to bring the offence within s. 425 *Held* also that s. 425 does not necessarily contemplate damage of a destructive character It requires merely that there should be an invasion of right, and diminution of the value of one's property, caused by that invasion of right, which must have been contemplated by the doer of it when he did it IN THE MATTER OF THE PETITION OF JUGGESHWAR DASS JUGGESHWAR DASS *v.* KOYLASH CHUNDER CHATTERJEE . . . . I. L. R., 12 Calc., 55

6. ——— **Person dealing with property under belief it is his own**—*Penal Code, s 425.*—If a person deals injuriously with property in the *bonâ fide* belief it is his own, he cannot be convicted of mischief. EMPRESS *v.* BUDH SINGH . . . I. L. R., 2 All., 101

7. ——— **Cutting and carrying away bamboos**—*Penal Code, s. 426.*—In a case in which the accused was charged with having cut and carried away bamboos, the right to which was disputed, it was held that he could not be convicted of mischief under s. 426 of the Penal Code. SHAKUR MAHOMED *v.* CHUNDER MOHUN SHA . 21 W. R., Cr., 38

8. ——— **Cutting trees on land in** . . .

formal intervention on his part. SONAI SARDAR *v.* BUKHTAR SARDAR . . 25 W. R., Cr., 46

9. ——— **Cutting Government trees without leave.**—*Held* that it was not illegal to convict prisoners of mischief as well as of theft, the offences charged being that they had cut down Government trees without leave, and appropriated them REG. *v.* NARAYAN KRISHNA

[2 Bom., 416: 2nd Ed., 392

. . .

damage, and does not apply to cases of mere carelessness; and s. 17, Act III of 1857, supposes the mischief (cattle trespass) was done intentionally, and not by negligence. QUEEN *v.* ARAZ SIRCAR

[10 W. R., Cr., 29

KASHINATH GHOSE *v.* DINOBUNDHOO MYTEE

[16 W. R., Cr., 72

11. ——— *Allowing cattle to stray.*—The mere fact of allowing cattle to stray, whereby damage is caused to the complainant, affords no evidence to support a conviction on the charge of mischief. ANONYMOUS . . 6 Mad., Ap., 37

12. ——— *Trespass.*—Mere neglect on the part of an owner of cattle to keep them from straying into fields is not causing cattle to enter

MISCHIEF—*continued.*

a compound within the meaning of s 425 of the Penal Code. That section requires that, before the owner is convicted of the offence, it must be proved . . .

. . . 31

13. ——— *Penal Code (Act XLV of 1860), s. 425.*—In order to constitute the offence of mischief within the meaning of s. 425 of the Penal Code, it is not sufficient to show that the owner of cattle which had caused damage was guilty of carelessness in allowing them to stray. The prosecution is bound to show that there was an intention to cause wrongful loss or damage. EMPRESS *v.* BAI BAYA . . . . I. L. R., 7 Bom., 126

14. ——— *Penal Code, s. 426—Cattle Trespass Act, I of 1871, s. 10—* . . .

Code. QUEEN-EMPRESS *v.* SHAIK RAJU

[I. L. R., 9 Bom., 173

15. ——— *Cattle Trespass Act, 1857, s. 18—Penal Code, s 425*—In the case of . . .

v. LINGANA BIN GINBANA . . 4 Bom., Cr., 14

16. ——— **Grazing cattle on waste lands.**—The defendants were convicted of mischief under s. 427 of the Penal Code for grazing their cattle upon waste lands without payment of certain capitation fees to which the prosecutor was entitled. *Held* that there was no evidence that the defendants caused mischief. ANONYMOUS . 5 Mad., Ap., 30

17. ——— **Interference with fishery** . . .

which the Moharajpore people had erected . . . the passage of fish. For this they were convicted of . . .

that the Moharajpore zamindar was encroaching . . . their master's rights. DAKAR HALSANA *v.* DINOBANDHU BISWAS . . 3 B. L. R., A. Cr., 17

MISCHIEF—*continued.*

S. C. QUEEN *v.* DENOO BUNDHOO BISWAS [12 W. R., Cr., 1

18. ——— – **Pulling up stakes lawfully placed at sea within territorial limits**—*Penal Code, ss. 425 and 427.*—Where certain of the inhabitants of the village of Manari in the Thana

Code was the substantive law applicable to the case, and that the offence amounted to mischief within the meaning of ss. 425 and 427 of that Code. REG. *v.* KASTYA RAMA . . 8 Bom., Cr., 63

19. ——— **Opening irrigation sluice at wrong time**—*Penal Code, s. 425.*—The defendants were convicted of mischief under the following circumstances. During certain seasons of the year they received water through a sluice for the irrigation of their lands. At another season the sluice was closed and the water allowed to flow to the lands of other cultivators. This arrangement was prescribed by the revenue authorities, and the defendants violated it by opening their sluice during the season prescribed for the irrigation of the lands of the other cultivators. *Held* that the conviction could not be

a river embankment, and thereby endangered the safety of the whole station,—*Held* that, in order to justify a conviction for the offence of mischief, it must appear that the accused person had done a particular act with intent to cause, or knowing it to be likely to cause, wrongful loss, and that, as the house and garden on which the accused was engaged would be the first to be swept away in the event of the dreaded breach in the bund and consequent irruption of the river, such guilty knowledge or intent could not reasonably be inferred on his part. IN THE MATTER OF THE PETITION OF PRAN NATH SHAHA. IN THE MATTER OF THE PETITION OF ROMA NATH BANERJEE . . . 25 W. R., Cr., 69

21. ——— – **Act done without show of right**—*Penal Code, s. 430—Causing diminution of*

22. ——— *Causing diminution of water-supply—Penal Code, s. 430—Water-course.*—Where upon the evidence it appeared that the complainant was the exclusive owner of a water-course, and that the accused had no sort of right

MISCHIEF—*concluded.*

to assert any claim to it, the causing of a diminution of the supply of water by the accused, even though in the assertion of a right, was held to be only an additional wrong, and to constitute mischief within the meaning of s. 430 of the Penal Code. *Ram Krishna Chetty v. Palanyandi Kudambar, I. L. R., 1 Mad., 262,* followed. QUEEN-EMPRESS *v.* JAGANNATH BHIKAJI BHAVE . I. L. R., 10 Bom., 183

23. ——— **Damage to bridge through floating logs.**—The accused were convicted of mischief. The acts were, that whilst the accused were employed in floating timber through a bridge, some of the logs struck against the arch of the bridge. *Held* that the conviction was bad. ANONYMOUS . . 5 Mad., Ap., 40

24. ——— **Erection by one joint owner of edifice without consent of others**—*Land held by joint owners—Penal Code, s. 425—Wrongful loss.*—*A*, a joint owner of a parcel of land, erected on it an edifice without the consent and against the will of *B*, another joint owner. A dispute having arisen in consequence, the Magistrate held an inquiry, and made an order, under s. 530 of the Criminal Procedure Code, 1872, awarding to *A* exclusive possession of the part of the land on which the edifice had been erected. *B* then brought a suit in the Civil Court to establish his title to joint possession

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25. ——— **Destruction of carcass**—*Right to skin of animals—Village mahars—Custom.*—The owner of an animal who buries it after its death is not guilty of mischief or any other offence, although he does so with the express object of preventing the mahars of his village from taking its skin according to the custom of the country. QUEEN-EMPRESS *v.* GOVINDA PUNJA [I. L. R., 8 Bom., 295

26. ——— **Destruction of immoral document**—*Penal Code, s. 425.*—The destruction of a document evidencing an agreement void for immorality may constitute the offence of mischief within the meaning of s. 425 of the Penal Code. QUEEN *v.* VYAPURY . . . I. L. R., 5 Mad., 401

[illegible]

See [illegible]

[illegible] —continued.

[illegible] — Plaintiff sued in a single [illegible] for the recovery of a sum of money lent by him to [illegible] [illegible]

[illegible]

MISJOINDER—*continued.*

fact been dealt with as holders of separate tenures. LALUN MONEE v. SONA MONEE DABEE [22 W. R., 334

6. ———— Suit against lessees and their sureties—Jurisdiction of Revenue Court.—Though a Revenue Court had, under Act X of 1859, no jurisdiction to take cognizance of a suit against the sureties of a lessee, a suit brought against the lessees and their sureties was not bad for misjoinder. DOORGA PERSHAD v. SHEORAJ SINGH [5 N. W., 222

7. ———— Suit for share of partnership assets—Insolvent estate—Administration suit by creditors—Addition as plaintiff of receiver in administration suit.—In a suit by the widow and executrix of a testator who at his death was a member of a mercantile firm, the plaintiff claimed to be entitled to 60 cents or shares in the firm up to the date of the testator's death, and to a like share in the profits earned subsequently to his death, or to be earned by the firm so long as it continued to carry on the said agency business of the company. The defendant admitted the right of the plaintiff to the share claimed in the profits earned prior to the testator's death, but resisted her claim to any portion of the subsequent profits. The testator's estate had proved insolvent; and previously to the filing of this suit an administration suit had been filed by creditors. By a decree made in that suit on the 23rd January 1883 a receiver had been appointed, who was made a co-plaintiff with the executrix in the present suit. It was contended on behalf of the defendant that there was a misjoinder, the receiver being only entitled to sue for what might be due to the testator's estate up to the date of his death. *Held* that there was no misjoinder. The receiver [illegible]

8. ———— Plaintiffs having separate interests.—In a suit by two plaintiffs for [illegible]

9. ———— Procedure where one plaintiff is found to have no interest.—In a suit [illegible]

10. ———— Suit by mortgagee to recover possession of mortgaged property.—

MISJOINDER—*continued.*

In a suit by a mortgagee for possession of the mortgaged property, on the allegation that some of the defendants under subsequent mortgages and purchases had opposed him in obtaining possession; and to have it declared that the said mortgages and pur- [illegible]

[illegible]

11. ———— Suit to cancel [illegible]

property by cancelment of a deed of mortgage of the same executed in K's favour by S. *Held* the suit was bad for misjoinder. BEHARI LAL v. KUNDAN LAL . . . . . 7 N. W., 103

12. ———— Owners of separate holdings once joint.—A suit to recover possession as cultivators, brought by two plaintiffs whose holdings, although originally one, have for a long time been separated and held separately, will be dismissed for misjoinder. GIRWUR v. NYAZ ALI [2 N. W., 306

13. ———— Separate interests in subject-matter of suit.—*R* owned one-third of an estate, and *P*, *B*, and *S* owned another third jointly. In a suit in which *R*, *P*, *B*, and *S*, joined in bringing against *N*, who was in possession under a [illegible]

14. ———— Suit for confirmation of possession of land not in joint possession.—The plaintiffs alleged that certain of their lands had [illegible]

15 ———— Suit for pre-emption [illegible]

vendors and vendees, who had no community of

MISJOINDER—*continued.*

interest in the subject-matter of the suit. The Court, allowing the plea of misjoinder, which both the lower Courts had overruled, remanded the case to the Court of first instance, in order that the plaint might be returned to the plaintiff for amendment, and the suit tried and decided afresh after amendment. GOLAM *v.* WAJIDA BIBI [7 N. W., 188

16. ——————— *Suit for redemption of mortgage—Civil Procedure Code, 1859, s. 8—Parties.*—*K* was in possession of mouzah Dharmapore as usufructuary mortgagee. A share in the mouzah was sold in the execution of a decree against the shareholder. It was afterwards transferred by private sale to *S* by the auction-purchaser. *S*, alleging that the mortgage-debt had been satisfied out of the usufruct, sued to recover possession of the share, and impleaded not only *K*, but also the heirs of the mortgagors, and his vendee, the auction-purchaser, but no cause of action was declared against those parties, nor did they resist the suit. The lower Courts dismissed the suit on the ground that separate causes of action, not between the same parties, had been included in one suit. The High [illegible] Courts so far [illegible] e heirs of the [illegible] remanded the suit for trial, as since the heirs of the mortgagors were interested in the account which must have been taken in the suit, it was necessary to make them parties in order that they might be bound by it. SUKHAWAT ALI *v.* KESHO TEWARI . 6 N. W., 203

17. ——————— *Specific performance, Suit for—Joinder of third person not party to the contract.*—In a suit for specific performance of a contract entered into by defendant No. 1, the plaintiff joined as a defendant a third person who alleged that he was the owner of the property, the subject of the contract, seeking to obtain possession and other relief as against such third person stating that he was a benamidar of the first defendant. There was nothing to show that such third person had any interest distinct from the first defendant. *Held* that there was no misjoinder. The principle laid down in the cases of *Houghton* v. *Money, L. R., 2 Ch. App., 166*, and *Luchumsey Ookerda* v. *Fazulla Cassumbhoy, I. L. R., 5 Bom., 177*, *viz.*, that a person not a party to the contract cannot be joined in a suit for specific performance, is only applicable where from the plaintiff's case it appears [illegible] contract, has [illegible] her parties to [illegible] o be declared [illegible])TAY LALL [I. L. R., 10 Calc., 1061

18. ——————— *Civil Procedure Code, s. 26—Amendment of plaint—Specific Relief Act, s. 42—Declaratory suit.*—Suit by six plaintiffs praying for a declaration that certain proceedings of a District Temple Committee removing them from office as trustees of a temple were illegal. [illegible] fendants pleaded that the suit would not lie because of misjoinder. *Held* that, under s. 26 of the Code of Civil Procedure, the plaintiffs could not sue jointly, and that the plaint should be returned for amendment, one of the plaintiffs to be allowed to use it as his own. RAMANUJA *v.* DEVANYAKA [I. L. R., 8 Mad., 361

19. ——————— *Plea of misjoinder, when sustainable—Suit against several persons claiming under different titles, Effect of—Civil Procedure Code, ss. 31 and 53.*—*A*, as auction-purchaser at a revenue sale, brought a suit against a number of persons for possession of some char land. The defendants claimed portions of the land under different titles and pleaded misjoinder. The Court, upon the Ameen's report, gave *A* the option to amend the plaint by withdrawing the suit against any particular sets of defendants. *A* elected to go to trial on the suit as brought. *Held* that, under the circumstances, it was necessary for the Court to adjudicate on the question of misjoinder. *Held* also that the plaintiff was not entitled to join in one suit all the persons, on the ground that they obstructed his possession, unless he was able to show that those [illegible]

DASI . . I. L. R., 14 Calc., 435

20. ——————— *Civil Procedure Code, s. 44, Rule (b).*—An objection to the attachment and sale of certain immoveable property, raised by one who claimed to have purchased the same at a sale in execution of a prior decree, was disallowed on the ground that under the prior decree the rights of one only of the present judgment-debtors had been sold and purchased by the objector. In accordance with [illegible] prior decree. To this suit he impleaded as [illegible] dants the decree-holder and the judgment-debtors. The suit was decreed, and in the result the decree-holder alone was compelled to pay the whole of the costs. Subsequently he brought a suit for contribution in respect of these costs, making defendants to the suit (i) *R*, one of his co-defendants in the previous suit, personally and as heir of *A*, who was another of those co-defendants, (ii) *N*, and (iii) *S*, these two being sued in the character of heirs of *A*. *Held*, with reference to a plea of misjoinder within the terms of rule (*b*) of s. 44 of the Civil Procedure Code, that, even if there were misjoinder of parties, the first Court, having proceeded to trial of the suit, [illegible] to that amount had come to the hands of the defendants as his heirs. KISHNA RAM *v.* RAKMINI SEWAK SINGH . . I. L. R., 9 All., 221

21. ——————— *Form of suit.*—The defendants' ancestors or predecessors in title were the cultivating tenants of the lands of a certain

MISJOINDER—*continued.*

temple from a date not later than 1827, in which year they were so described in the pymaish accounts. In 183?, they executed a muchalka to the Collector, who then managed the temple, whereby they agreed among other things to pay certain dues. They were described in the muchalka as paracudis. In 1857 the plaintiff's predecessors took over the management of the temple from, and executed a muchalka to, the Collector, whereby he agreed among other things not to eject the raiyats as long as they paid kist. In 1882, the dues (which were payable separately) having fallen into arrear, the manager of the temple sued to eject the defendants. *Held* that the suit was not bad for misjoinder. THIAGARAJA v. GIYANA SAMBANDHA PANDARA SANNADHI

[I. L. R., 11 Mad., 77

22. — *Joinder of plaintiffs—Wrongful act affecting the rights of the several plaintiffs—Trespass.*—Where certain persons were alleged to have committed a wrongful act

Held that a suit brought by the plaintiffs jointly was not bad for misjoinder. MUTHUVIJAYA RAGHUNADHA RAJU TEVAR v. CHOCKALINGAM CHETTI

[I. L. R., 19 Mad., 335

23. — *Mad. Reg. V of 1804, s. 8—Suit by ward of the Court of Wards—Civil Procedure Code, 1882, s. 464.*—

grantor unless mining operations were carried on

BERESFORD v. RAMASUBBA I. L. R., 13 Mad., 197

24. — *Civil Procedure Code (Act XIV of 1882), ss. 26, 31, 34*

MISJOINDER—*concluded.*

tic, and following the decision in *Lingammal v. Chinna, I. L. R., 6 Mad., 239*, held that the suit was bad for misjoinder of parties. The case was thereupon remanded for an amendment of the plaint. On appeal to the High Court,—*Held*, reversing the remand order, that, the objection for misjoinder as

Held also that, as plaintiff No. 2 admitted the adoption of plaintiff No. 1, their claims were in no way antagonistic. They were both jointly interested in disproving defendant's title. They could therefore sue jointly under s. 26 of the Code of Civil Procedure. *Lingammal v. Chinna, I. L. R., 6 Mad., 239*, distinguished. FAKIRAPA v. RUDRAPA

[I. L. R., 16 Bom., 119

25. — *Civil Procedure Code (1882), s. 26—Joinder of plaintiffs—Persons jointly interested in a suit—Claims not antagonistic—Cause of action, Meaning of—Parties.*—The plaintiffs 1 to 4 were the daughter and daughter's sons of one *G*. They alleged that *G* died, leaving

estate of *G* as next heir; and that the plaintiffs jointly granted a patni settlement of the property to one *B* (plaintiff No. 5), but he was kept out of possession by the defendant, who claimed it by pur-

that the suit was not maintainable for misjoinder of plaintiffs,—*Held* that the expression "cause of

the alternative may not be the same; and that, as the plaintiffs in the case complained of the same

antagonistic claim, such a case came within s. 26 of the Code, and was not bad for misjoinder of plaintiffs. *Lingammal v. Chinna Venkatammal, I. L. R., 6 Mad., 239; Nusserwanji Merwanji Panday v. Gordon, I. L. R., 6 Bom., 266*, dissented from. *Fakirapa v. Rudrapa, I. L. R., 16 Bom., 119*, followed. HARAMONI DASSEE v. HARI CHURN CHOWDHRY . . I. L. R., 22 Calc., 833

MISPRISION OF TREASON.

See WAGING WAR AGAINST THE QUEEN. [7 B. L. R., 63

MISREPRESENTATION.

See CHARTER-PARTY [I. L. R., 14 Bom., 241
I. L. R., 15 Bom., 389

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY THE COURT (INEQUITABLE CONTRACTS) [I. L. R., 17 Calc., 291
13 B. L. R., 34
I. L. R., 3 Bom., 242
L. R., 16 I. A., 233

See FRAUD—EFFECT OF FRAUD. [I. L. R., 8 Calc., 118
I. L. R., 24 Calc., 533

See RIGHT OF SUIT—MISREPRESENTATION. [I. L. R., 4 Bom., 465
2 N. W., 13
I. L. R., 24 Bom., 166

——— as to area of land sold.

See VENDOR AND PURCHASER—FRAUD [I. L. R., 18 All., 322

——— by minor.

See MINOR—LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS. [I. L. R., 24 Calc., 265
1 C. W. N., 453
I. L. R., 25 Calc., 371, 616
2 C. W. N., 18, 201, 330
I. L. R., 26 Calc., 381
I. L. R., 21 Bom., 168

MISTAKE.

See CHARTER-PARTY. [I. L. R., 16 Bom., 561

See HINDU LAW—PARTITION—RIGHT TO PARTITION—GENERALLY. [I. L. R., 21 Bom., 333

See SETTLEMENT—CONSTRUCTION. [I. L. R., 17 Bom., 407

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—MISTAKES.

See TRUST . I. L. R., 18 Bom., 551

——— Condition imposed by—

See HINDU LAW—ADOPTION—SECOND, SIMULTANEOUS, AND CONDITIONAL ADOPTIONS . I. L. R., 2 Bom., 377

——— in filling up stamped paper.

See STAMP ACT, s. 51. [I. L. R., 18 Mad., 123

MISTAKE—*concluded.*

——— in name of party to contract.

See CONTRACT—BOUGHT AND SOLD NOTES . I. L. R., 20 Calc., 854

——— in statement of age.

See INSURANCE—LIFE INSURANCE. [I. L. R., 20 Bom., 99

——— Land sold by—

See LIMITATION ACT, ART. 12 [I. L. R., 20 Mad., 118

——— Money paid by—

See CIVIL PROCEDURE CODE, 1882, s. 244—QUESTIONS IN EXECUTION OF DECREE. [I. L. R., 1 All., 398

See CASES UNDER CONTRACT ACT, s. 72

——— of fact.

See CERTIFICATE OF ADMINISTRATION—CANCELMENT OR RECALL OF CERTIFICATE . I. L. R., 19 Bom., 821

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY. [I. L. R., 3 Calc., 603
L. R., 5 I. A., 78

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—EVIDENCE, MODE OF DEALING WITH . I. L. R., 15 Bom., 670

See WAIVER . . 5 Mad., 437, 444

See WRONGFUL RESTRAINT. [I. L. R., 24 Calc., 885

——— of law.

See ESTOPPEL—ESTOPPEL BY CONDUCT. [I. L. R., 19 Bom., 374

See LIMITATION ACT, 1877, s. 5 [I. L. R., 11 Calc., 767
I. L. R., 13 Calc., 63
I. L. R., 13 Mad., 293
I. L. R., 13 All., 461

See LIMITATION ACT, 1877, s. 14 [I. L. R., 10 All., 587
I. L. R., 12 Bom., 339
I. L. R., 19 All., 348
3 C. W. N., 233

——— of taxing officer.

See COURT FEES ACT, 1870, s. 5. [I. L. R., 15 All., 117

——— Pottah granted by—

See COLLECTOR I. L. R., 12 Mad., 404

——— Suit brought under—

See LIMITATION ACT, 1877, s. 14 (1871, s. 15) . I. L. R., 3 Calc., 817
[I. L. R., 9 Calc., 255
L. R., 9 I. A., 83

MOFUSSIL COURTS, POWER OF—

———— Mofussil Courts have no power to make orders *in personam* against persons not parties to a suit such as is possessed by the original side of the High Court. RAMNIDHY KOONDOO *v.* OJOODHYARAM KHAN . 11 B. L. R., Ap., 37

S C RAM NIDHEE KOONDOO *v.* AJOODHYA RAM KHAN . . . 20 W. R., 123

MOHUNT.

See CASES UNDER HINDU LAW—ENDOWMENT

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—MARRIAGE [I. L. R., 5 Bom., 682

See HINDU LAW—INHERITANCE—RELIGIOUS PERSONS, ETC
[I. L. R., 1 All., 539
5 W R., Mis, 57
3 Agra, 295
I. L. R., 9 All., 1
L. R., 13 I A, 100

See ONUS OF PROOF—CUSTOM.
[I. L. R., 5 Bom., 682

———— Personal estate of—

See CERTIFICATE OF ADMINISTRATION—ISSUE OF, AND RIGHT TO, CERTIFICATE
[I. L. R., 4 Calc., 954

MOKURARI ISTEMRARI TENURE.

See GRANT—CONSTRUCTION OF GRANTS
[I. L. R., 1 Calc., 391

See CASES UNDER LEASE—CONSTRUCTION.

—— Effect on, of subsequent farming lease.—A mokurari holding cannot be extinguished by a subsequent farming lease DHURM ROY *v.* MUDDOOSOODUN PROSAD CHOWDHRY
[W. R., 1864, Act X, 117

MONEY-DECREE.

See CASES UNDER EQUITY OF REDEMPTION.

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY—MONEY-DECREES ON MORTGAGES

MONEY HAD AND RECEIVED.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.
[I. L. R., 15 Bom., 580

See CASES UNDER LIMITATION ACT, 1877, ART. 62.

See LIMITATION ACT, 1877, ART. 97.
[I. L. R, 19 Calc., 123
L. R., 18 I. A., 158
I. L. R., 18 Mad., 173

MONEY HAD AND RECEIVED —*continued.*

See LIMITATION ACT, 1877, ART 120.
[I. L. R., 15 Mad., 382
I. L. R., 18 All., 430

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MONEY HAD AND RECEIVED.

1. Money paid under compulsion of law—*Payment into Court by mortgagee of* [illegible]

[illegible]

to be attached as being the property of *J H P.* Thereupon the plaintiffs, alleging themselves to be in possession of the steamer as mortgagees from *J H P,* in order to obtain its release, paid the amount of the decree against *J H P* into Court, and the steamer was given up. Subsequently an order was made b[illegible] the Court on the application of [illegible]

[illegible]

paid the amount of the decree on compulsion. *Held* the plaintiffs could maintain the suit, although the defendant had not actually received the amount of the decree. MORAN *v.* DEWAN ALI SIRANG
[8 B. L. R., 418

2. ———— Money paid under compulsion of law cannot be recovered back as money had and received. JUGGOBUNDHOO GHOSE *v.* CHOWDHRY MUMTAZ HOSSEIN . W. R., 1864, 205

3. ———— Voluntary payment—*Payment without authority* —If *A* without *B's* authority pay *B's* creditor, he cannot recover back from the creditor the amount so paid. MOOL CHUND *v.* AJOODHYA PERSHAD . . . 3 N. W., 162

4. ———— *Suit by sub-lessee against lessor for malikana which he was com-* [illegible]

[illegible]

LALL . . . . . . 6 N. W., 1

5. ———— Proceeds of joint immoveable property after satisfaction of decree by sale of tenure, Suit for.—The plaintiff and the defendant were co-owners of a certain talukh The [illegible]

[illegible]

annas share thereof. *Held* that the plaintiff was entitled to recover. RAM COOMAR SEN *v.* RAM COMUL SEN . . I. L. R., 10 Calc., 388

MONEY HAD AND RECEIVED—*concluded.*

6. ———— Money paid as price of goods, Suit to recover—*Consideration, Failure of.*—Money paid as the price of goods to be delivered hereafter is money received for the use of the seller, and it is only upon failure of consideration that the money so paid becomes money received for the use of the buyer. AKUL KRISTO BOSE *v.* LYON & Co. [I. L. R., 14 Calc., 457

MONEY LENT.

See HINDU LAW—CONTRACT—MONEY LENT . . 5 B. L. R., 396 [7 B. L. R., 489

See LIMITATION ACT, ART. 60.
[I. L. R., 16 Calc., 25
I. L. R., 18 Mad., 390
I. L. R., 19 Bom., 352, 775

———— Suit for—

See RIGHT OF SUIT—MONEY LENT.
[I. L. R., 23 Calc., 851

MONEY PAID.

See CASES UNDER LIMITATION ACT, 1877, ART. 61.

———— by mistake.

See CASES UNDER CONTRACT ACT, s. 72.

———— by trespasser in possession.

See WRONGFUL POSSESSION.
[I. L. R., 4 Calc., 566

———— in excess satisfaction of decree.

See CIVIL PROCEDURE CODE, 1882, s. 244—QUESTIONS IN EXECUTION OF DECREE.
[I. L. R., 1 All., 388
6 Mad., 304
17 W. R., 14
15 W. R., 160
19 W. R., 413
4 C. L. R., 577
I. L. R., 22 All., 79

———— in execution of decree, Suit to recover—

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 244—QUESTIONS IN EXECUTION OF DECREE.

See CASES UNDER CIVIL PROCEDURE CODE, 1882, ss. 257, 258.

———— to prevent sale.

See RIGHT OF SUIT—SALE FOR ARREARS OF REVENUE . . I. L. R., 13 All., 195

See CASES UNDER SALE FOR ARREARS OF RENT—DEPOSIT TO STAY SALE.

See CASES UNDER SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

MONEY PAID—*concluded.*

1. ———— Voluntary payment—*Compulsory payment of revenue—Previous request.*—*L*, having been compelled by a revenue officer to pay revenue payable by *P*, sued *P* to recover the amount as having been paid on his account. His plaint disclosed no cause of action against *P*, triable in a Civil Court, for he did not plead that the payment was made at the request, expressed or implied, of *P*. There being no such request on the part of *P* to support the action, it was held that *L* could not recover. PATTU LAL *v.* LUCHMAN PARSHAD 7 N. W., 155

2. ———— *Penal assessment of revenue paid under protest—Proof of illegal coercion.*—In order to enable one having paid money under protest to recover money so paid, it is necessary for him to show that the payment was made under illegal coercion. MUTHAYYA CHETTI *v.* SECRETARY OF STATE FOR INDIA
[I. L. R., 22 Mad., 100

3. ———— *Payment to stay sale.*—Plaintiff's ancestor had purchased in execution [illegible]

ordered after purchase by plaintiff's ancestor, the latter, whose objections did not avail, finally pre- [illegible]

4. ———— *Money paid to protect property afterwards shown to have been wrongly attached in execution of decree.*—Where [illegible] and carry it [illegible]

another person, the defendant was held to have [illegible]

MONEY PAID FOR BENEFIT OF ANOTHER.

See VOLUNTARY PAYMENT.
[I. L. R., 22 Calc., 28

1. ———— Payment of revenue by the claimant of an estate while temporarily holding it under a decree in his favour, afterwards reversed—*Liability of owner for money so paid for his benefit.*—Where a claimant, [illegible]

sion, he nevertheless is entitled to be repaid [illegible]

MONEY PAID FOR BENEFIT OF ANOTHER—*concluded.*

amount by his opponent, who benefits by it, provided that he has not realized, or failed through any fault of his own to obtain, enough out of the rents and profits during his possession to cover this expenditure. The plaintiff had paid revenue and cesses in such a case. *Held* that on his accounting for mesne profits, and all that he had received, or might have received from the estate, he should recover from the defendants, in whose favour the decree was ultimately made, the difference between his, the plaintiff's, payments and receipts. DAKHINA MOHAN ROY *v.* SARODA MOHAN ROY

[I. L. R., 21 Calc., 142
L. R., 20 I. A., 160

2. ——— — Revenue due on account of Hindu widow's estate paid by lambardar —*Remedy of lambardar after death of widow for recovery of money so paid—Decree against representative of Hindu widow.*—*G D*, a separated sonless

G D. J died, and the property in question passed to *S h* as heir to *G D*. On suit by the lambardar to re-

MONEY PAID UNDER PROCESS OF DECREE.

See COSTS—INTEREST ON COSTS.
[I. L. R., 4 Calc, 229
20 W. R., 49

See MONEY HAD AND RECEIVED.
[W. R, 1864, 205

1. ———— Reversal or supersession of decree —Money recovered under a decree or judgment cannot be recovered back in a fresh suit or action, whilst the decree or judgment under which it was recovered remains in force. But this rule of law rests upon the ground that the original decree or judgment must be taken to be subsisting and valid, until it has been reversed or superseded by some ulterior proceeding. If it has been so reversed or superseded the money recovered under it ought to be refunded, and is recoverable either by summary process or by a new suit. DOORGA PERSHAD ROY CHOWDRY *v.* TARA PERSHAD ROY CHOWDHRY. SHAMA PERSHAD ROY CHOWDHRY *v.* HURRO PERSHAD ROY CHOWDHRY . 3 W. R., P. C., 11
[10 Moore's I. A, 203

Interest cannot be recovered on it. ASHRUFUNISSA BEGUM *v.* KHANUM JANU . . 6 W. R., 235

2. ——————— *Suit to recover money paid under decree—Act XXIII of 1861, s. 11.*—In a suit by the present defendant against the

MONEY PAID UNDER PROCESS OF DECREE—*continued.*

present plaintiff for enhancement of rent, the Court

Chowdhry v. Hurro Pershad Roy Chowdhry, 10 Moore's I. A, 203, that the decrees for enhanced rent were superseded, and that such a suit as the present one would lie. *Held* by GARTH, *C.J.*, and JACKSON, *J*, distinguishing *Shama Pershad's* case, that these decrees were not superseded: that the principle of *Marriot* v. *Hampton, 2 Smith's L. C., 6th Ed., 375,* applied, and that the plaintiff was not entitled to recover. JOGESH CHUNDER DUTT *v.* KALI CHURN DUTT

[I. L. R., 3 Calc., 30: 1 C. L. R., 5

3. ——— Supersession of decree.

this decree, *A* obtained a second decree against *B* for arrears of rent at enhanced rates for the succeeding year. This decree, however, made the payment of so

rent calculated at enhanced rates *Held* that the

recoverable. MOHAMED ELAHEE BUKSH *v.* KALLY MOHUN MOOKHOPADHYA

[I. L. R., 5 Calc., 589: 5 C. L. R, 519

4. ——————— *Suit to recover compensation in respect of property sold under a decree—Decree not reversed or superseded.* A zamindar applied to a revenue officer to commute the rent hitherto paid in kind by certain of his tenants to a fixed money rent to be paid in future. The Assistant Collector made the order asked for and fixed the money rent to be paid in future. After that order had been made, the zamindar brought a suit for arrears of rent against the tenants in a Court of Revenue and obtained a decree for rent at the rate which had been fixed by the order of the Assistant Collector. Against this decree the tenants did not appeal, and it became final. The decree was put into execution: property of the tenants was attached and sold, and the decree was partially satisfied out of the sale-proceeds. Subsequently to the passing of the

MONEY PAID UNDER PROCESS OF DECREE—*continued.*

decree for rent, the Board of Revenue set aside the order of the Assistant Collector commuting the rent in kind to a fixed money rent. The tenants thereupon sued to recover compensation on account of the sale of their property under the decree *for rent*. *Held* that the suit would not lie, inasmuch as the decree for rent under which the plaintiff's property was sold was unreversed and not superseded by any competent Court. *Marriot v. Hampton, 2 Smith's L. C., 10th Ed., 409; Shama Parshad Roy Chowdhry v. Hurro Parshad Roy Chowdhry, 10 Moore's I. A., 203; Jogesh Chunder Dutt v. Kali Churn Dutt, I. L. R., 3 Calc., 30*, and *Nilmoney Singh Deo v. Sharoda Parshad Mookerjee, 18 W. R., 434*, referred to. KISHEN SAHAI *v.* BAKHTAWAR SINGH

[I. L. R., 20 All., 237

5. ———— **Decree subsequently found to be barred** — *Suit to recover money paid to save estate from sale under decree afterwards held to be barred—Jurisdiction of Civil Court.*—Application having been made to a Deputy Collector to execute a decree for rent, the judgment-debtor, in

declared barred *Held* that the judgment-debtor's only remedy was by a suit in the Civil Court to get back the money. GHANNOO SINGH *v.* RAM GOBIND SINGH . . . . . . 13 W. R., 231

6. ———— **Decree passed ultra vires and subsequently reversed**—*Suit for money paid under it.*—The assignee of a decree having obtained execution of it in the Deputy Collector's Court under cover of a declaratory and mandatory decree of the Civil Court, which latter decree was set aside on appeal, a suit was brought against the assignee to recover the money which he had obtained by means of the execution proceedings. *Held* that the judgment-debtor or his representative (the plaintiff) had no title to recover the money unless he could show that he had been in some way defrauded by the transaction; the proceeding of the Deputy Collector giving him no cause of action by the mere fact of its having been *ultra vires* or not done in full exercise of judicial discretion. RAM GOBIND SINGH *v.* GUREENOO SINGH

[20 W. R., 406

7. ———— **Decree afterwards reversed** —*Suit to recover money paid under it.*—Money realized in execution of a decree may be recovered by suit, if the decree is set aside as regards the party seeking to recover. If such party was not a party

DABEE *v.* SHITARAM HAZRA . 21 W. R., 346

8. ———— *Execution of decree—Payment of decree amount by one defendant—Reversal of decree on appeal by another defendant—*

MONEY PAID UNDER PROCESS OF DECREE—*concluded.*

Right to refund—Civil Procedure Code, s. 583.—In a suit for rent, together with interest thereon, brought by a mortgagee against a tenant in occupation of the mortgage premises, one claiming title against the mortgagee was joined as second defendant. The suit was dismissed in the Court of *first instance*, but the Court of first appeal passed a decree as prayed in the plaint, and in execution the principal amount of the rent claimed, which had been paid into Court by the first defendant with the request that it should be paid out to the person entitled to it, was paid over to the plaintiff. The first defendant preferred a second appeal against the decree, so far as it awarded interest and costs: this second appeal was dismissed. The second defendant, however, preferred against the entire decree a second appeal, which was successful, that the High Court dismissed the suit throughout. On an application by the first defendant for refund of the money paid by him as stated above,—*Held* that the applicant was not entitled to the refund claimed. KASSIM SAID *v.* LUIS

[I. L. R., 17 Mad., 83

9. ———— **Voluntary payment**—*Executor de son tort—Payment of debt due by deceased —Suit to recover amount paid from heir.*—K, the widow of a deceased Hindu, sued to recover his estate from *V*, his brother, who had taken possession thereof as heir. Pending this suit, a decree was obtained against *V* and *K* for payment of a debt due by the deceased out of his estate. *V* paid the debt out of his own money. *K* having recovered the estate, *V* sued her to recover the money paid by him in satisfaction of the decree. *Held* that *V* was entitled to recover. KANAKAMMA *v.* VENKATARATNAM . . . . I. L. R., 7 Mad., 586

10. ———————— *Attachment of property of third person—Payment into Court of amount of decree by owner of property in order to release property—Application in execution for* ... attached ... hur, whose ... ty and not ... the decree ... He then ... refunded to ... property, ... making the order for repayment the Judge acted without jurisdiction, there being no provision in the Civil Procedure Code (Act XIV of 1882) under which it could be made. The proper course was to have taken steps under s. 278 of the Code to have the attachment on the property raised. By paying the amount of the decree into Court it became necessary to file a suit for the recovery of the money so paid. VARAJLAL MOTICHAND *v.* KACHIA GARBAD KHUSHAL

[I. L. R., 22 Bom., 473

MONEY PAYABLE BY INSTALMENTS.

See CASES UNDER INSTALMENTS.

MONEY PAYABLE ON DEMAND.

See HINDU LAW—CONTRACT—MONEY LENT . . 5 B. L. R., 396 [7 B. L. R., 489

See CASES UNDER LIMITATION ACT, 1877, ART. 73

MONEY, SUIT FOR

See LIMITATION ACT, 1877, ART 113 [I. L. R., 16 All., 3

See RES JUDICATA—CAUSES OF ACTION [I. L. R., 3 Calc., 23

See RES JUDICATA—MATTERS IN ISSUE [I. L. R., 20 Mad., 418

See VALUATION OF SUIT—SUITS [I. L. R., 12 Bom., 675 I. L. R., 18 Bom., 696

MOOKTEAR.

See CASES UNDER PLEADER.

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . 14 W. R., 36 [20 W. R., 119 13 B. L. R., 177 I. L. R., 7 Calc., 245

——— and client.

See PRIVILEGED COMMUNICATION. [1 B. L. R., A. Cr., 8 I. L. R., 25 Calc., 736 2 C. W. N., 484

——— Dismissal of—

See LEGAL PRACTITIONERS ACT, SS 14 AND 40 . I. L. R., 15 Calc., 152 [L. R., 14 I. A., 154

——— Functions of—

See LEGAL PRACTITIONERS ACT, S. 32. [I. L. R., 14 Calc., 556

——— Giving commission to—

See PLEADER—REMOVAL, SUSPENSION, AND DISMISSAL . 11 B. L. R., 312

——— Power of, to present application for execution of decree.

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—JOINT DECREES JOINT DECREE-HOLDERS I. L. R., 4 Calc., 605

1. ——— Admission of mooktears—*Power of High Court.*—The High Court would not interfere with Zillah Judges in the selection and admission of mooktears, under the 39th section of the Pleaders' Rules, 1866 IN THE MATTER OF THE PETITION OF MAHOMED HOSSEIN [5 W. R., Mis., 49

2. ——— *Rule 39 of Rules of High Court.*—The 39th of the Rules for mooktears, issued by the Court in 1866, only required that every person who had been practising as a mooktear in the Criminal Courts should be at liberty to satisfy the Judge that he was a person of good moral character and qualified by his knowledge of law and procedure, before he could be entitled to admission under that rule But it was not the intention of the Court that parties should be subjected to regular examinations, or that the duty imposed upon the Judge should be delegated to the Magistrate. IN RE GOLUCK CHUNDER KUR . 6 W. R., Mis., 29

3. ——— *Grant of certificate—Limitation.*—There was no limitation of time for the grant of a certificate by a Judge, under Rule 39 of the Rules made by the Court in 1866 for the admission of mooktears. IN RE JOAKIM [6 W. R., Mis., 120

4. ——— Application for leave to practise in Court in another district— [illegible] Court [illegible] Where [illegible] gunge [illegible] for a [illegible] latter [illegible] practise [illegible] authorities of Backergunge of the truth of his representations, the High Court declined to interfere, thinking the refusal reasonable, but observed that, as the application had been made within three years from [illegible]

5. ——— Appearance of mooktear—*Right to appear—Criminal Procedure Code (Act X of 1872), s. 278—Appeal in criminal case*—An appellant in a criminal case has a right to appear and be heard by a mooktear. EMPRESS *v* SHIVRAM GUNDO . . . . I. L. R., 6 Bom., 14

See IN RE SUBBA AIYALA I. L. R., 1 Mad., 304

6 ——— *Civil Procedure Code, 1882, s. 37—Rule 16 of Rules of High Court, Calcutta—Court Fees Act (VII of 1870), sch. II, art. 10*—A mooktear holding a mooktearnamah bearing an eight anna stamp authorizing him to act in a case may perform any act which a mooktear may do in the course of a case. GUNAMOYEE DEBI *v.* NOBIN CHUNDRA BANDOPADHYA 1 C. W. N., 11

7. ——— Acting as mooktear—*Act XX of 1865, s. 13.*—The mere bringing a plaint to a vakil for his signature by a mooktear not duly qualified was not an acting as a mooktear which rendered the party liable to a fine under s 13. Act XX of 1865. The Judge of a Court of Small Causes had no jurisdiction in such a matter, unless the plaint was one to be presented to that Court. IN RE MUDDUN MOHUN BISWAS . . 6 W. R., Civ. Ref., 29

8. ——— *Act XX of 1865, ss. 11 and 13—Practising without certificate*—The writing a petition for a party who presents it in Court is not acting as a mooktear within the meaning of s 11, Act XX of 1865, and the writer is not liable to punishment under s. 13 for practising as

MORTGAGE—*continued.*

See CASES UNDER JURISDICTION—SUITS FOR LAND—REDEMPTION.

See CASES UNDER LIMITATION ACT, 1877, ARTS. 134, 135, AND 147.

See MAHOMEDAN LAW—MORTGAGE.
[I. L. R., 20 Bom., 116

See MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—MORTGAGES.
[B. L. R., Sup. Vol., 166
6 B. L. R., Ap., 114
11 W. R., 282

See MALABAR LAW—MORTGAGE

See CASES UNDER ONUS OF PROOF—MORTGAGE.

See CASES UNDER PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

See CASES UNDER REGISTRATION ACT, 1877, S. 50.

See STAMP ACT, 1869, S. 3.
[I. L. R., 2 Calc., 58

See STAMP ACT, 1879 S. 3, CL. 4 (*b*).
[I. L. R., 9 All., 585

See STAMP ACT, 1879, S. 3, CL. 13
[I. L. R., 11 Mad., 39
I. L. R., 21 Mad., 358
L. R., 27 Calc., 587
4 C. W. N., 524

See CASES UNDER STAMP ACT 1879, SCH. I, ART. 44

See CASES UNDER TRANSFER OF PROPERTY ACT, S. 2.

See CASES UNDER TRANSFER OF PROPERTY ACT, S. 135

See CASES UNDER VENDOR AND PURCHASER—PURCHASE OF MORTGAGED PROPERTY.

——— by member of joint Hindu family.

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY FATHER.

See CASES UNDER HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS.

——— Property sold subject to—

See CASES UNDER SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

See CASES UNDER SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.

——— Property subject to—

See COURT FEES ACT, SCH. I, ART. 11.
[I. L. R., 1 Bom., 118
6 N. W., 214
8 B. L. R., Ap., 43

MORTGAGE—*continued.*

——— Suit for sale on—

See CASES UNDER TRANSFER OF PROPERTY ACT, S. 99.

——— Usufructuary mortgage.

See TRANSFER OF PROPERTY ACT, SS. 67, 68.

See TRANSFER OF PROPERTY ACT, S. 99
[I. L. R., 16 All., 415
I. L. R., 17 All., 520
I. L. R., 26 Calc., 164
3 C. W. N., 290

See TRANSFER OF PROPERTY ACT, S. 135.
[I. L. R., 16 All., 315

1. FORM OF MORTGAGES

1. ——— Bond containing hypothecation.—A bond which hypothecates property for money advanced is a deed of simple mortgage. NAZINA BIBEE *v.* JUGGOMOHUN DUTT
[14 W. R., 461

2. ——— Proof of actual pledge and ownership of property by pledgor.—*Decree on mortgage bond pledging land*—The contract of hypothecation defined. A creditor suing under such a contract must prove that there was an actual pledge, [illegible] e at [illegible] sale [illegible] pay [illegible] be fixed by the Court. CHETTI GAUNDAN *v.* SUNDARAM PILLAI . . . . . 2 Mad., 51

3. ——— Immoveable property made security for loan without power of sale.— [illegible] the property until a decree for sale has been made in his favour, and the transaction does not amount to a mortgage. When immoveable property has been so made security for the payment of a debt, there can be no foreclosure by the creditor, unless the terms of the contract admit of it. KHEMJI BHAGVANDASS *v.* RAMA . . . I. L. R., 10 Bom., 519

4. ——— Mortgage without change of possession—*Parol mortgages of chattels.*—A mortgage may be supported if proved to have been made *bonâ fide*, although the property mortgaged may have been left in the possession of the mortgagor. Mortgages of chattels may be made by parol. SHYAM SOONDER *v.* CHEITA . . . 3 N. W., 71

5. ——— Advance to save property from sale—*Lien.*—A person who advances money to another for the purpose of saving a mehal of the latter from sale for arrears of rent has no lien on the property for the money advanced. *Dutt Jha v. Pearee Kaunt*, 18 W. R., 404, and *Enayet Hossein*

MORTGAGE—*continued.*

1. FORM OF MORTGAGES—*continued.*

v. *Muddun Mconee Shahoo, 14 B L. R., 155 22 W. R., 411* cited and held not to apply HURRY MOHUN BAGCHI v. GIRIS CHUNDER BUNDOPADHYA

[1 C L R., 152

6. —— — Form of words of hypothecation—*Intention of parties*—Formal words of hypothecation are not necessary to make an hypothecation valid, if the intention of the parties is sufficiently expressed. MARTIN v PURSRAM . 2 Agra, 124

7. —————— —— *Uncertain agreement.—Semble*—That where certain persons, describ-

124, distinguished. DEOJIT v PITAMBER

[I. L. R., 1 All., 275

8. ———————— *Charge on immoveable property—Ambiguity.*—*A*, to whom the Government had made a grant of certain villages, executed an instrument in favour of his brother

guished. *Rae Manik Chand v Benaree Lal, 2 N. W., 263,* followed KANAHIA LAL v. MUHAMMAD HUSAIN KHAN . . . I. L. R., 5 All., 11

9. ———————— *Requisites of a mortgage—Contract—Construction*—In 1862 *A*, in consideration of a debt of R150, passed to *B* a writing called karz roka or (debt-note) It provided (*inter alia*) that *B* should hold and enjoy a

contract between the parties was not a mortgage, and that the defendant had a right to retain occupation at least of the vineyard, subject only to a rent of R50 a year. There was no stipulation for interest, nor was there any agreement for the payment of R150 in

10. ———— — *Document not creating charge.*—*A* lent *B* R99, and *B* executed

MORTGAGE—*continued.*

1. FORM OF MORTGAGES—*continued.*

a document on the 24th July 1881, whereby he agreed to repay the amount with interest in the month of Baisakh 1289 F S. (April 1882), and further agreed that, if he did not pay the money as stipulated, he should sell his right to certain land, and that *A* should take possession thereof, and that, after *A* took possession of the land, no interest should be paid by him (*B*), and that *A* should pay the rent of the landlord out of the profits of the land without any objection. *A* instituted a suit on the 3rd August 1885 to recover the R99. *Held* that the document did not amount to a mortgage MADHO MISSER v. SIDH BINAIK UPADHYA *alias* BENA UPADHYA

[I. L. R., 14 Calc., 687

property, my own "milk," does not create a mortgage upon any property of the obligor. COLLECTOR OF ETAWAH v. BETI MAHARANI . I. L. R., 14 All., 162

12. ———— Agreement in petition creating a lien—*Money-decree.*—Where a suit was brought on a petition which the plaintiff contended

Although a mortgagee has obtained a money-decree, he can bring a regular suit to enforce his mortgage-lien. DUMA SAHU v. JEONARAYAN LAL

[4 B. L. R., A. C., 27 note

S. C. DOOMA SAHOO v. JOONARAIN LALL

[12 W. R., 362

plaintiff was entitled to a simple money-decree available against his moveable property only. JOGESWAR DUTT v NITAICHUND CHUCKERBUTTY

[4 B. L. R., Ap., 48

14. ———— Creation of charge on property—*Construction of agreement.*—An agreement in a bond, executed by a mortgagor subsequently to a mortgage in the following words, viz ,—" after the

MORTGAGE—*continued.*

1. FORM OF MORTGAGES—*continued.*

28. ——————— *Condition against alienation.*—*Held* that, where a person stipulates generally not to alienate his property, he does not thereby create a charge on any particular property belonging to him. BHUPAL *v.* JAG RAM [I. L. R., 2 All., 449

29. ——————— *Agreement not to alienate—Form of mortgage.*—By an agreement reciting that *A* had executed a bond in favour of *B* for a certain sum of money, *A*, "in order to repay the bond-money in the terms in the bond contained," declared that, "until the repayment of the money covered by the bond, he would not, from the date of the agreement, convey the property mentioned therein to any one by deed of sale, or deed of conditional sale, or mokurari pottah, or deed of mortgage, or zur-i-peshgi ticca pottah. Should he make any of these transactions in respect of the ...

... that the instrument operated as a mortgage to *A* of the lands comprised therein. No precise form is required to create a mortgage. RAJ KUMAR RAMGOPAL NARAYAN SINGH *v.* RAM DUTT CHOWDRY [5 B. L. R., 264: 13 W. R., F. B., 82

30. ——————— *Covenant not to alienate—Mortgage ...*

... though he might sue for damages in respect of breach of contract. RAMBUKSH *v.* SOOKH DEO [1 N. W., 111: Ed. 1873, 159

31. ——————— *Stipulation not to alienate.*—An ikbaldawah, containing a stipulation that the debtor shall not alienate certain property till the satisfaction of the decree, does not amount to hypothecation giving the decree-holder a lien on the property. The decree-holder may sue for damages on the breach of contract by the judgment-debtors, but has no right to the property against a purchaser. CHOONEE LALL *v.* PUHULWAN SINGH 3 Agra, 270

32. ——————— *Agreement not to alienate—Construction of mortgage-deed—Gift to wife for dower.*—A mortgagor stipulated that he would not sell the property mortgaged during the ...

... did not absolutely prohibit alienation, but simply conferred on the mortgagee a pre-emption right to purchase, and that the mortgagee could not sue for avoidance of the alienation to the wife, without claiming or expressing a willingness to purchase. SHIVA CHARAN DASS *v.* ROOSTUM [Agra, F. B., 69: Ed. 1874, 53

MORTGAGE—*continued.*

1. FORM OF MORTGAGES—*continued.*

33. ——————— *Covenant not to alienate—Transfer to purchaser—Claim to pay by instalments.*—A mortgage-bond provided that the mortgage-debt should ...
no ...
gag...
be ...
gagor transferred the mortgaged property, the sale-deed providing that the unpaid balance of the mortgage-debt should be paid to the original mortgagees by instalments, and that any further sum should be paid by the mortgagor. The Court of first instance decreed possession to the purchaser, whose possession was resisted by the mortgagees, on payment of the unpaid balance of the mortgage-debt in full. On the appeal of the purchaser, who claimed to pay off the debt by instalments, the Court declined to interfere with the decree. MAHOMED ZAKAOOLLAH *v.* BANEE PERSHAD . . 1 N. W., Ed. 1873, 135

34. ——————— *Condition against alienation—Auction-purchaser at sale in execution of decree.*—A transfer of mortgaged property made in contravention of a condition not to alienate is not absolutely void, but voidable in so far as it is in defeasance of the mortgagee's rights. Where, in contravention of a condition not to alienate, the mortgagor had transferred his proprietary right in the mortgaged property to a third person for a term of years, the Court declared that such transfer should not be binding on a purchaser at the sale in execution of the decree obtained by the mortgagee for the sale of the property ...
such pur...
THAKUR DAS ...

and see KHUB CHAND *v.* KALIAN DAS [I. L. R., 1 All., 240

35. ——————— *Right of assignee of bond containing covenant not to alienate property.*—A stipulation in a bond to the effect that the obligor will make no transfer of certain property hypothecated by such bond until the debt thereby secured has been paid up cannot be used by a third person, not a party to the bond, to defeat a subsequent charge upon the same property granted in favour of another creditor of the obligor. KOONPUR LAL *v.* WAZEER ALI . . 3 N. W., 205

36. ——————— *Purchaser at sale in execution of decree, Right of—Condition against alienation.*—*J* gave *B* a bond for the payment of money in which he hypothecated certain immoveable property as security for such payment, covenanting not to sell or transfer such property until the mortgage-debt had been paid. In breach of this condition, he granted *M* a lease of his rights and interests in such property for a term of twelve and a half years. *B*, having sued on such bond and ob...

... of the decree, alleging that the lease had been granted to defeat the execution of the decree. The High

MORTGAGE—*continued.*

1. FORM OF MORTGAGES—*continued.*

Court refused, in view of its decision in *Chunni* v. *Thakur Das, I. L. R., 1 All., 126,* to interfere with the decree of the lower Court giving *B* such a declaration. MUL CHAND *v.* BALGOBIND

[I. L. R., 1 All., 610

37. ———— *Covenant not to*

tained no further proviso declaring invalid future alienations of the lands belonging to *A*, in the manner specified in the bond. *Held* that the instrument did not operate as a mortgage by *A*. GUNOO SINGH *v.* LATAFUT HOSSAIN

[I. L. R., 3 Calc., 336 : 1 C. L. R., 91

38. ———— *Covenant not to alienate or encumber.*—The obligors of a bond for the payment of money covenanted as follows: "To secure this money, we have mortgaged a five gandas share out of a ten gandas share in each of the villages, etc. So long as the principal amount with

[I. L. R., 7 All., 258

39. ———— *Agreement not to alienate—Mortgage-bond.*—In consideration of a

under the Registration Act in the book numbered "four" required to be kept by the Act. *A* subsequently sold his immoveable property, and the con-

NUSIR MISTRI . . . I. L. R., 7 Calc., 196

[8 C. L. R., 454

See also DOSS MONEY DOSSEE *v.* JONMENJOY MULLICK I. L. R., 3 Calc., 363 : 1 C. L. R., 443

40. ———— Usufructuary mortgage—

MORTGAGE—*continued.*

1. FORM OF MORTGAGES—*continued.*

they entered into it. In the case of an usufructuary mortgage, where no term is specified, the mortgagor is entitled to re-enter on the property when, on taking an account, he is able to show that the principal and interest have been satisfied. LALA DOUL NARAIN *v.* RUNJIT SINGH . . . 1 C. L. R., 256

41. ———— *Advance on zur-i-peshgi lease.*—A lease was granted on a zur-i-peshgi advance for seven years at an annual jumma of R214-4, from which a deduction of R111-15 was to be made on account of interest; and it was also

. . . . 2 Hay, 159

42. ————

mortgage transaction. KHOOSHAL RAE *v.* JANKEE DOSS . . . 2 N. W., 9

43. ———— *Transfer of Property Act (IV of 1882), ss. 58 (d), 98—Usufructuary mortgage—Anomalous mortgage.*—

first in lieu of yearly interest and any balance appropriated in payment of the ...

together with the residue of interest up to the date of suit. *Held* that inasmuch as there was no stipulation in terms that the mortgagee was to remain in possession until payment of the mortgage-money, the instrument did not strictly fall within s. 58 (*d*) of the Transfer of Property Act (IV of 1882), *i.e.*, as a usufructuary mortgage, and that the rights and liabilities of the parties must be determined in accordance with the principles enunciated in s. 98 of that Act, *i.e.*, as an anomalous mortgage. *Held*, upon the construction of the instrument, that it must be regarded as a usufructuary mortgage not only during the four years, but after their expiration. HIKMATULLA KHAN *v.* IMAM ALI . I. L. R., 12 All., 203

44. ———— *Anomalous mortgage—Right to possession—Transfer of Property*

MORTGAGE—*continued.*

1 FORM OF MORTGAGES—*continued.*

Act (IV of 1882), s. 98.—Two out of three co-parceners executed in favour of a creditor in respect of land belonging to the co-parcenary an instrument which contained the following terms "As we have received R500, you will, in lieu of the said amount and interest, enjoy the said property for three years by virtue of Arakattu otti . on the condition that, on the expiry of the said three years, we should redeem the land without paying either principal or interest You will, on the expiry of the said period, deliver possession of the said immoveable property without raising any objection" The creditor obtained possession of only part of the land *Held* that the instrument was an anomalous mortgage, and that the mortgagee was liable to ejectment after the expiry of the three years. VISVALINGA PILLAI *v* PALANIAPPA CHETTI . I. L. R., 21 Mad., 1

45. ——— *Advance by tenant to landlord on account of security for payment of rent.*—A sum taken by a landlord as an advance, to be credited to his lessee in his accounts as rent, may be considered as security for the payment of the rent, but does not change the lease into a mortgage GRIDHAREE SINGH *v.* COLLIS 8 W. R., 497

46. ——— *Zur-i-peshgi lease with covenant not to alienate or evict lessee.*—By a zur-i-peshgi lease granted upon the advance of R5,517, the lessee was to hold possession of certain villages for the term of five years, and to pay himself, out of the proceeds of the villages, interest on the loan, and the lessor undertook not to mortgage or alienate the property during the term, and not to oust the lessee or, if he did, that he would pay him R1,000. Before the expiration of the term the villages were taken in execution, and sold under a decree at the suit of a third party, and the lessee turned out of possession. *Held* that the lessee had no claim against the villages for the principal money, and that the sum of R1,000 was forfeited NUNDLALL *v.* KULLIANABUTTEE . Marsh., 209: 1 Hay, 532

47. ——— *Usufructuary* [illegible]

[illegible] in pecuniary [illegible] sought was in effect an injunction to restrain *B* from collecting the revenue of the zamindari The defence set up by *B* in his answer was in substance that the lease was an executory contract, and being without consideration could not be enforced, and was, moreover void for maintenance, by reason of a subsequent agreement for the advance of a sum of money to carry on a suit which had not been carried out. The Judge of the Civil Court adopted this view and held the lease [illegible] treated t[illegible] and decr[illegible] Judicial [illegible] sion under the lease, but as it appeared from the evidence questionable whether the transaction in respect of the lease did not really operate only as a loan, and as a right to redeem might exist, the affirmance was made with a declaration that it was to be without prejudice to the claim (if any) of *B* to which he might be entitled, and to any question which might be raised as to the amount which was actually advanced by *A* to *B*. KAMALA NAIKEN *v.* PITCHACOOTTY CHETTY . 10 Moore's I. A., 386

48 ——— *Party paying off debt, Right to possession of.*—A party who by paying off a mortgage becomes an usufructuary mortgagee in place of the original zur-i-peshgidar does not need to sue for the amount due, but is entitled to remain in possession until the whole debt has been discharged by the usufruct FUZLOOLLAH *v* KAZIM HOSSEIN . . . . 14 W. R., 29

49. ——— *Right to proceed against land to realize debt.*—A covenant to put the creditors into possession of certain property which they were to retain for a certain period, taking the profits in lieu of interest, is only an usufructuary mortgage and not a deed of hypothecation, and a suit to bring the property to sale for the realization of the amount due under the deed is not maintainable. DULLI *v.* BAHADUR . . 7 N. W., 55

50. ——— *Covenant not to lease—Lease of property mortgaged—Suit to set aside lease.*—*A* mortgaged certain property to *B*, agreeing, amongst other things, not to grant in zur-i-peshgi or mortgage the property to any one so as to cause any difficulty in the realization of the money advanced under the mortgage-bond. *A* subsequently leased in zur-i-peshgi part of the property to *C*. *B* [illegible] on *B*'s mortgage, and [illegible]

his right declared to sell the property in satisfaction of his mortgage-debt, so as to give the zur-i-peshgidar an opportunity of redeeming RADHA PERSHAD MISSER *v.* MONOHUR DASS

[I. L. R., 6 Calc., 317: 7 C. L. R., 293

51. ——— *Sale—Construction whether lands had been sold or mortgaged—Evidence—Documents explained by parol—Waste land grants—Usufructuary mortgage*—Waste lands granted in 1870 were transferred by the grantee in 1871 to his creditor, since deceased, from whose representatives in 1891 he claimed redemption, alleging that the transfer had been made upon a mortgage with possession. The grantee had previously, in 1870, mortgaged the lands to this creditor to secure advances taken for part payment of the purchase-money. In 1871 they arranged that the creditor should advance the entire balance, and they jointly

MORTGAGE—*continued.*

1. FORM OF MORTGAGES—*continued.*

petitioned for an entry to be made in the register of waste land grants that the ownership had been transferred from the one to the other of them. This entry was made, and endorsements to the same effect were made on the documents of grant. On the question whether the transaction was a mortgage, or a sale as the defendants alleged it to be, general evidence was given, in addition to the documentary, and among the facts in favour of the plaintiff was that the creditor had retained uncancelled, till his death, all acknowledgments for the money advanced by him in the transaction. Although, under other circumstances, and on the documents alone, the inference might have been that there had been a sale for some undisclosed consideration, yet on the true construction of the joint petition, and the orders made thereon, the proper conclusion was that the entry and endorsements were intended only as a record of the arrangement proposed by the parties, and sanctioned by the registering officer. The intention was not to have an absolute sale. The transaction was *held* to be a mortgage which the plaintiff was entitled to redeem. KADER MOIDEEN *v.* NEPEAN

[I. L. R., 21 Calc., 882
L. R., 21 I. A., 96

52. ———— ———— *Sale—Conditions for repurchase*—The plaintiffs sued to redeem an [illegible]

not a mortgage, but a sale. It was an agreement which put an end to the previously existing mortgage. A mere stipulation for re-purchase does not make a transaction a mortgage. To make a mortgage there must be a debt, and here there was no debt, nor was the property here conveyed as security. VASUDEO BHIKAJI JOSHI *v.* BHAU LAKSHMAN RAVUT

[I. L. R., 21 Bom., 528

53.———————— *Mortgage or sale—Test of whether instrument is a mortgage or a* [illegible]

on was a mortgage or a deed of sale with the option of re-purchase after ten years. *Held* that the instrument was a mortgage. The test was whether after the execution of the deed there continued to be a debt from the so called vendors to the vendee, or whether the pre-existing debt became extinguished on the execution of the deed. BAPU *v.* BHAVANI

[I. L. R., 22 Bom., 245

54. ———— Mortgage by conditional [illegible]

the ancient law of India which must be taken to prevail in every part of India where it has not been [illegible]

[illegible] I Mad., 1
[L. R., 2 I. A., 241

55. ———————— *Sale expiring before 1859.*—When the term of a conditional sale, [illegible]

[illegible] L. R., 3 Mad., 26

56. ———————— *Continuing debt.*—When one party to a transaction alleges it to be a mortgage and the other alleges it to be a sale, the question for consideration is whether or not there continued to be a debt from the former to the latter. The plaintiffs sued for possession of certain lands.

MORTGAGE—*continued.*

1 FORM OF MORTGAGES—*continued.*

alleging that they had been mortgaged to the defendant by their father under two documents. The defendant produced them and relied upon them as deeds of sale, which conveyed to him absolutely the lands mentioned in them. The form of the instruments was not conclusive, but it appeared *aliunde* by the conduct of the defendant himself that the deeds were intended as mere securities for money, and that he had treated them as such Certain entries in the *defendant's accounts also treated the respective considerations* named in the deeds as continuing debts due to the defendant from the plaintiffs' father. The

a Court of Equity would regard the instruments as mere securities for money. GOVINDA *v.* JESHA PREMAJI . . . . I. L. R., 7 Bom., 73

57. ——— *Sale since 1858—Construction of right of redemption.—Per curiam* (INNES, *J.*, dissenting)—In the Madras Presidency, where contracts of mortgage by way of conditional sale have been entered into subsequent to the year 1858, redemption after the expiry of the term limited by the contract must be allowed as suggested in *Thumbusawmy Moodelly* v. *Hossain Rowthen, I. L. R., 1 Mad., 1. Per* INNES, *J.*—Contracts of mortgage and conditional sale must be construed in accordance

reference to the rule enforced by English Courts of Equity, adopted by the Sudder Court in 1858, and followed for thirteen years in this Presidency. RAMASAMI SASTRIGAL *v.* SAMIYAPPANAYAKAN

[I. L. R., 4 Mad., 179

See VENKATA SUBBAYA *v.* VENKAYYA

[I. L. R., 15 Mad., 230

58. ——— *Deed, Construction of—Bai-bil-wafa—Foreclosure in the Central Provinces*—By a bond, dated 10th February 1857, a certain village was mortgaged by one *G* to the

Revenue granted a lease of the village for ten years to the appellants' father. The mortgagees in a suit on the bond obtained the following decree on 3rd November 1860: "As the defendant acknowledges the plaintiffs' claim, it is ordered that a decree be given to the plaintiffs for principal and interest and costs against the defendant and the mortgaged property." In proceedings in the Civil Court taken under this decree, the mortgagees asked for possession of the village, and obtained, on 17th July 1862, an order, in pursuance of which they were put in possession, an appeal by *G* being rejected. *G* took various steps to obtain possession of the mortgaged property, or a declaration of his proprietary interest therein, but

extinguish the right of redemption.

59. ——— *Deed of sale convertible into a mortgage—Construction of deed.*—Where a deed, which on the face of it was described as a mortgage, stated that the grantee was already in

60. ——— *Deed of sale* ... *Construction of deed*

grantee, and containing an agreement that the grantee should pay R75 to another creditor of the grantee ... R275 so

sale of the mortgaged lands by the grantor to the grantee for the considerat on of R275, and covenanting that the grantee should reconvey to the grantor the lands, the subject of the grant, if the grantor should repay to the grantee the sum of R275 within

MORTGAGE—*continued.*

1. FORM OF MORTGAGES—*continued.*

a certain period, and providing that, in case of default in such payment within such period, the covenant for reconveyance should become null,—*Held* that the transaction was a sale and not a mortgage, and that, consequently, the grantor had no right to redeem the lands after the expiration of the period so fixed for the payment of R275 by the grantor to the grantee, there being no evidence or allegation that, at the date of the execution of the two documents, the sum of R275 was an insufficient consideration for the sale of the lands, nor any stipulation that the grantee should account for the rents and profits received by him, or that the grantor should pay interest on the R275, nor anything to show that the grantor remained in possession after the execution of the two documents, or that subsequently to that time any advances were made by the grantee to the grantor

Ramji v. Chinto, 1 Bom., 199, viz., once a mortgage always a mortgage, is still in force in the Presidency of Bombay with regard to mortgages containing clauses of conditional sale, whether executed before or after 1858 The ancient law and usage of the country respecting gahan lahan mortgages, and generally the alienation of immoveable property, discussed. KAPUJI APAJI v. SENAVARAJI MARVADI [I. L. R., 2 Bom., 231

61. ——————— *Vendor and pur-*

the terms of the agreement, the property vested in the purchaser. BHUP KUAR v. MUHAMMADI BEGAM . . . I. L. R., 6 All., 37

62 ——————— *Sale of perpetual lease, with conditional agreement to sell back*

MORTGAGE—*continued.*

1. FORM OF MORTGAGES—*continued.*

vendor to re-purchase under certain conditions personal to him SITUL PURSHAD v. LUCHMI PURSHAD [I. L. R., 10 Calc., 30 : 13 C. L. R., 382 L. R., 10 I. A., 129

63. ——————— *Vendor and purchaser—Conditional right of re-purchase—Redemption, Suit for.*—*A*, having previously hypothecated certain land to *B*, executed a conveyance of it to him in 1873 for a consideration which was now found to have been an inadequate price On the same

v. RAHIMANSA . . I. L. R., 14 Mad., 170

64. ——————— *Sale, with right reserved of re-purchase within a period, distinguished from mortgage—Construction of documents of sale and of agreement for re-sale.*—A document

Alderson v. White, 2 De G & J., 105, referred to and followed, the law of India and of England being the same on this point BHAGWAN SAHAI v. BHAGWAN DIN . . . I. L. R., 12 All., 387 [L. R., 17 I. A., 98

65 ——————— Mortgage by conditional bill of sale—*Joint property held benami in name of co sharers Interest of mortgagee.*—An estate was bought benami in the name of *A* by the father of *A*. After the father's death, a sum of money was raised by conditional bill of sale signed by *A* as proprietor and by his brother *B* as mutaliah. Afterwards, and after the death of *B*, and after *B*'s heirs

66 ——————— *Change of name in Government records—Subsequent agreement to*

defendant executed the following document to the

MORTGAGE—*continued.*

1. FORM OF MORTGAGES—*continued.*

plaintiff reciting the previous transfer and agreeing to retransfer the land to the plaintiff's name on the 12th July 1880 if the debt which would then be due should be paid off "In the village of Behrampur is your (plaintiff's) field, Survey No 146, measuring 5 acres 3 gunthas bearing assessment R16 You (plaintiff) have got it transferred to our name That field therefore stands in our (defendants') name in the Government records You owe a debt to us. On account of that debt you have transferred it to our name . The field shall be retransferred to your name when you repay the said debt to me. You have cultivated the field for the produce of Samvat 1936, and a lease in respect thereof you have this day passed to me And a stamp paper was purchased at the time of the transfer for the execution of this

fail to pay (them) till Vaishakh Shudh 4th, you will have no claim whatever to the said field. I shall not take the rupees after the 4th (chauth), nor shall I give (or transfer the field to you . . I shall lease the field to any one I like without keeping any claim of you as regards cultivation, manure and hedge You have no claim or right whatever . "
The plaintiff brought this suit to redeem the land, alleging that it had been mortgaged to the defendant, and that the debt had been paid off The defendant

that the transaction in 1877 was a mortgage to the defendant, and not a sale PATEL RANCHOD MORAR v. BHIKABHAI DEVIDAS I. L. R., 21 Bom., 704

67 ——————— *Sale with a right of re-purchase—Conditional sale effected by two contemporaneous deeds—Evidence dehors the documents showing what the transaction really was—Intention of parties.*—The plaintiff and the defendants executed upon the same day two documents The one purported to be a deed of absolute sale of a certain estate by the plaintiff to the defendants. The other was an agreement by which the defendants covenanted, upon payment of a certain sum by a specified date, to reconvey the property sold by the first-mentioned deed. *Held* that evidence was admissible dehors the documents to show that the intention of the parties was not to effect an out-and-out sale with merely a right of re-purchase under certain conditions left in the vendor, but to constitute a mortgage by conditional sale or bai-bil-wafa. The mere fact of a deed of absolute sale being accompanied by another giving a right of re-purchase will not, for that reason alone, constitute the transaction one of mortgage, but the intention of the parties must be

MORTGAGE—*continued.*

1. FORM OF MORTGAGES—*continued.*

gathered from the terms of the deeds or from the surrounding circumstances or from both. *Alderson v. White, 2 De G. & J., 105; Lincoln v. Wright, 4 De G. & J., 16, Bhagwan Sahai v. Bhagwan Din, L. R., 17 I. A., 98 I. L. R., 12 All., 387; Ali Ahmad v. Rahmat-ullah, I. L. R., 14 All., 195; Ra-*

Affirmed by the Privy Council.

[I. L. R., 23 All., 149
L. R., 27 I. A., 58
4 C. W. N., 153

68. ——————— *Deed of conditional sale—Bai-bil-wafa, Nature of—Transfer of Property Act (IV of 1882), s. 58—Pre-emption, suit for.*—The transaction known to Mahomedan law as a bai-bil-wafa is a mortgage within the meaning of s 58 of Act IV of 1882, and not a sale. The plaintiff in a suit for pre-emption had, prior to the sale of the property claimed, executed a deed in respect of his share in the village in virtue of which

should without any objection or hesitation receive the money, and, returning the property sold described above in the document to me, the vendor, revoke the sale" *Held* that this deed was a bai-bil-wafa or mort-

69 ——————— *Wazib ul-arz—Co-sharer—Mortgagee of a co-sharer.*—Two co-sharers in a village, *A* and *G*, mortgaged their proprietary interest, with possession, to *L*. *L* made either an assignment or a sub-mortgage of her interest under the mortgage for a term of twenty years to *B*, with a foreclosure clause in case of non-payment. *B* afterwards transferred to *X* for an unexpired period of sixteen years and eleven months the interest in the property which he had acquired from *L*. One *N L* a co-sharer in the village, thereupon brought a suit for pre mortgage in respect of the transfer to *X*, on the basis of the village wazib-ul-arz, which gave a right of pre-emption or pre-mortgage when the share of a co sharer should be sold or mortgaged. *Held* that, inasmuch as *B* could not be regarded as

MORTGAGE—*continued*

1. FORM OF MORTGAGES—*concluded.*

1887, p. 93, and in *Ali Ahmed v. Rahmat-ullah, I. L. R., 14 All., 195*, followed. NAND LAL v. BANSI
[I. L. R., 20 All., 19

2. CONSTRUCTION

70. ——— Rights of mortgagee—*Pro*...

mortgagee should recover from any other property in the possession of the mortgagor, whose person should also be liable for debt, were construed as merely intended to give some supposed further security to the mortgagee, but not to take away his right to issue notice of foreclosure and obtain possession by a suit, even though the mortgaged property were sold away. ACHUMBIT MISSER v. LALLA NUND RAM
[11 W. R., 544

71. ——— *Construction of*...

after paying the revenue and the expenses of collection, to credit the balance towards payment of the ...

...BELI v. RAMPAL SINGH
[I. L. R., 11 Calc., 237: L. R., 12 I. A., 1

72. ——— Arrangement for repayment by lease—*Set-off of rent.*—On the 1st of November 1866, *A* covenanted to pay to *B* R80,351 with interest on the 10th of May 1870, and pledged ...

MORTGAGE—*continued.*

2. CONSTRUCTION—*continued.*

for a term of seventeen years from the 10th of September 1870 at a rent of R20,541 a year. The lease recited the mortgage-debt and the necessity of providing for payment of it, and contained an agreement that out of the annual rent *B* should retain R16,500 on account of the debt and pay the remainder to *A*. In a suit to redeem and cancel the bond and lease,—*Held* that they did not form one mortgage transaction, but were separable and separate, and that *A* would only be entitled to set off the rent retained against the mortgage-debt and interest, and thenceforth to receive the full rental of R20,351 a year for the term of the lease yet unexpired. JOOMNA PERSHAD SOOKOOL v. JOYRAM LAL MAHTO
[2 C. L. R., 26

73. ——— *Operative words in a mortgage-deed—General language.*—A mortgage-deed, having specifically charged the property ...

74. ——— *Previous mortgage—Sale under mortgage-decree—Effect of* ...

effected by himself will, as a general rule, enure to the benefit of the mortgagee by increasing the value of the latter's security. SHYAMA CHURN BHUTTACHARJEE v. ANANDA CHANDRA DAS
[3 C. W. N., 233

75. ——— *Mention in mortgage-deed of another debt due to mortgagee distinct from sum advanced at date of mortgage—Clause in deed undertaking to pay off old debts when taking back the land—Old debt not a charge on land, but redemption conditional on payment of both debts.*—*V* mortgaged certain land to the defendant's father for a sum of R64 advanced by the latter at the date of the mortgage. The mortgage-deed stated that *V* owed the mortgagee another debt of R100, which was due on a separate bond, and it contained a clause in the following terms: "The ...

to enjoy the land . . . ." The plaintiff, having obtained a decree against the mortgagor,

MORTGAGE—*continued.*

2. CONSTRUCTION—*continued.*

redemption of his mortgage, which the defendant refused. The plaintiffs then brought the present suit to recover possession *Held* that the charge on the land did not include the old debt of R100 There

purchaser at the execution-sale would be bound by such a condition YESHVANT SHENVI *v.* VITHOBA SHETI . . . . I. L. R., 12 Bom., 231

76. ———— *Priority of mortgage—Intention of preserving a prior security presumed—Mortgagee—Mortgagor.*—On the 29th November 1882 *H* mortgaged to the plaintiff his one-third share in a house and garden to secure R1,000 with interest at 12 per cent On the 3rd January 1884 *H* mortgaged his one-third share in the same house to a third person to secure R1,000 with interest at 18 per cent On the 14th May 1884 *H* and his two brothers mortgaged to the plaintiff the entirety of the said house and garden to secure R3,400 with interest at 18 per cent This last mortgage recited the mortgage of 29th November 1882, and a further loan of R100 by the plaintiff to *H*, and contained the following clause "Now in order to liquidate the said debt, and on account of our necessity, we three brothers do this day mortgage to you whatever right, title, and interest we have in the said two premises and take the loan of R3,400; out of this money we have also liquidated the said debt, therefore for interest of the said money we are paying at the rate of R1-8 per month" *Held* that the transaction of the 14th May 1884 did not amount to payment of

security, the presumption being, unless an intention to the contrary were shown, that the plaintiff intended to keep the security alive for his own benefit *Gokuldas Gopaldas v. Puranmal Premsukhdas, I. L. R., 10 Calc., 1035,* followed in principle. GOPAL CHUNDER SREEMANY *v.* HEREMBO CHUNDER HALDAR . . . I. L. R., 16 Calc., 523

77. ———— *Mortgage of a portion of bhag—Particulars of property stated in deed—Leading description—False demonstratio—Bhag—Item. Act V of 1862, s 3.*—A mortgage-deed of certain bhagdari lands stated that "all the properties appertaining to the entire bhag" were

MORTGAGE—*continued.*

2. CONSTRUCTION—*continued.*

thereby mortgaged to the plaintiff. The bhag comprised (*inter alia*) four gabhans (building sites). But the clause, which set forth the particulars of the property mortgaged thereby, specified only two gabhans, *one only* of which belonged to the bhag and the other did not. The deed then proceeded: "According to these particulars, lands, houses and gabhans barnyards

was void under the third section of Bombay Act V of 1862, but was valid as to property not comprised in the bhag. TRIBHOVANDAS JEKISANDAS *v.* KRISHNARAM KUBERRAM

[I. L. R., 18 Bom., 283

78. ———— *Meaning of the term "sudi"—Interest post diem.*—The use of the term "sudi" (bearing interest) in a mortgage-deed held not to imply a covenant to pay *post diem* interest, there being a specific agreement to repay the mortgage-debt, principal and interest, in seven years. RIKHI RAM *v.* SHEO PARSHAN RAM

[I. L. R., 18 All., 316

79. ———— **Conditional sale**—*Karana*

no such inconsistency between the two instruments as to make the second invalid. KAKERLAPOODY JAGGANADHA RAZ *v.* VUTSAVOY JAGGANADHA JAGAPUTTY RAZ

[5 W. R., P. C., 117: 2 Moore's I. A., 1

80. ———— *Relief after time named in conveyance.*—Plaintiff executed to defendant a document of which the following is a translation "The muddata kriyam executed on the 10th April 1835 by the Madugula zamindar to the zamindar of Bobbili. As I have conveyed to you as sale for

MORTGAGE—*continued.*

2 CONSTRUCTION—*continued.*

R6,000 the Papuchetti Seri adjoining the land of kasbah Jagrannathapuram in the zamindari of Madhugula, they are given you for absolute sale, so the said sale money has been received at the time of sale. In the event of my paying you the principal R6,000 within six months from this date, you must give back the said land Papuchetti Seri to me In

[illegible]

division, reckoning [illegible]

This mudd[illegible]

consent"

condition fc[illegible]

Sudder Court of Madras have carried the doctrine of relief after the time named in the conveyance so far as to say that wherever the security for money is an object of the transaction, no sale can become absolute. The High Court have followed the English rule and have held the question one of construction, admitting however, for the purpose of the construction, other documents and oral evidence. LAKSHMI CHELLIAM GARU (ZAMINDAR OF BOBBILI) v. KRISHNA BHUPATI DEVU MAHARAZ GARU (ZAMINDAR OF MADUGULA) . . . 7 Mad., 6

81. ——— *Construction of deed—Suit for possession.*—The defendants borrowed money from the plaintiff without interest, but executed a deed stipulating that the sum borrowed was to be repaid on a given date, and that, if not paid then, the defendants should execute a patni lease of certain properties set forth in the deed, the sum borrowed

[illegible]

plaintiffs sued for possession *Held* that they were entitled to possession on the footing of a patni from the date of suit, and that the transaction was not

[illegible]

82. ——— *Mortgage—Re-*

[illegible]

realizable by suit from his non-hypothecated property and person. *Held*, on the construction of the instrument of mortgage, that the mortgage was not redeemable on payment of the last year's interest only, but on payment of the interest of the other years as well. SURJU PRASAD v. MANSUR ALI KHAN

[I. L. R., 5 All., 463

83. ——— *Covenants as to payment of interest—Default in payment of interest.* A mortgage-deed contained covenants for payment at the expiration of a year from its date, with interest to be paid month by month, in the month following that for which it should be due, and to run on from the

[illegible]

case the principal and interest should thereupon become claimable. With the latter requirement the mortgagor failed to comply, not paying the interest within the stated time *Held* that, on the true con-

[illegible]

84 ——— *Redemption—*

[illegible]

stead of mortgaged. *Held* that, no account having been taken as provided, the mortgage was redeemable within sixty years. MATTLALI AMIRUDIN SHARIF v. GUNDU SOBHANADRI . I. L. R., 6 Mad., 339

85. ——— Usufructuary lease—*Conditions of huq-i-ijara to be reserved to mortgagor—*

[illegible]

party who claimed to be a sharer, and he had to sue for and obtain a partition of the remaining 8 annas which he retained, for what it was worth as security. The plaintiffs bought the mortgagors' share, and now sued for the huq-i-ijara originally reserved. *Held* that the mortgagors could not claim any benefit

MORTGAGE—*continued.*

2. CONSTRUCTION—*continued.*

under the ijara lease until all the benefits which it pretended to secure to the defendant were realized by him ACHUMBIT SINGH *v.* KESHO LALL [20 W. R., 128

86. ——— Usufructuary mortgage—*Condition for reconveyance of property*—In a usufructuary mortgage it was stipulated that the property was to be reconveyed on repayment of the principal sum lent, but nothing was said as to interest *Held* that the condition implied that the usufruct was intended to be received by the mortgagee in lieu of interest, and therefore the mere fact that the amount of the principal had been received from the usufruct was no ground for the mortgagor being entitled to re-possession of the property BUNWAREELAL *v.* MAHOMED HOSSEIN KHAN . 2 Hay, 150

87. ——— *Simple usufructuary mortgage—Right to have the property sold—Distinct covenant to pay the principal—Possession in lieu of interest*—A merely usufructuary mortgage will confer no right to have the mortgaged property sold. But where there is a distinct covenant to pay the principal, and the land is security for the same, the intention of the parties is that the property should be sold. Such a transaction is a simple usufructuary mortgage, and carries with it the right to have the property sold in default of payment of the principal A mortgagee, who is entitled to possession in lieu of interest, and who does not take possession, loses his right to interest, and cannot ask that the property be sold for default in payment of interest, the property being security for the principal only. MAHADAJI *v.* JOTI I. L. R, 17 Bom., 425

88 ——— *Power of sale—Bom. Reg. V of 1827, s. 15, cl. 3.*—Where a mortgage provided that the mortgagee was to take possession of the land and enjoy the profits in lieu of interest and the mortgagor was at liberty to recover possession in any year on payment of the principal amount,—*Held* that the mortgage was a usufructuary mortgage, and under the circumstances of the case it was not the intention of the parties that the property should be sold, and that the mortgage-deed contained a special agreement which took the case out of the provisions of cl. 3, s 15 of Regulation V of 1827, which was the law in force at the time the mortgage was effected SADASHIV ABAJI BHAT *v.* VYANKATRAO RAMRAO SHINDE [I. L. R, 20 Bom., 298

89. ——— *Mortgage of a mixed character partly simple and partly usufructuary—Decree for sale—Transfer of Property Act (IV of 1882), s 58.*—In construing a mortgage-deed, the terms of which are of a doubtful character, the intention of the parties, as deducible from their conduct at the time of execution and other contemporaneous documents executed between them, is to be looked to Mortgage-deeds of a mixed character and other than those expressly defined in s. 58 of the Transfer of Property Act, 1882, must be construed as far as possible in accordance with the covenants contained in them. Where a deed is partly of the

MORTGAGE—*continued.*

2. CONSTRUCTION—*continued.*

Mal, 2 Agra, 150, Phul Kuar v. *Murlidhar, I. L. R., 2 All., 527; Jugal Kishore* v. *Ram Sahai, Weekly Notes, All., 1886, p. 212; Umrao Begam* v. *Vali-ullah, Weekly Notes, 1888, p 171; Ramayya* v. *Guruva, I. L. R., 14 Mad, 232,* and *Sivakami Ammal* v. *Saundram Ayyan, I. L. R, 17 Mad., 131,* referred to. JAFAR HUSEN *v.* RANJIT SINGH [I. L. R., 21 All., 4

90. ——— *Power to cancel zur-i-peshgi lease.*—The words in a zur-i peshgi

default to pay off the loan, and that it contained no undertaking by the mortgagee to hold on until it suited the mortgagor to pay him off. ROY GOWREE SUNKUR *v* BHOLLE PERSHAD . 17 W. R., 211

91. ——— *Construction of—Arrears of rent from tenants and mortgagors, Right to*—By the terms of a deed of usufructuary mortgage the mortgage was redeemable at the end of the term by payment of the principal and the arrears of rent due from the mortgagors and the tenants.

from the negligence of the mortgagee, and as it was not shown that the arrears due by tenants could not have been realized by due diligence, and the mortgagee had it in his power to realize the rents, the mortgagee was not entitled to recover such arrears. CHOTI LAL *v* KALKA PARSHAD . 7 N. W., 100

92. ——— *Suit for excess of Government revenue paid under.*—By the terms of a deed of usufructuary mortgage the mortgagor

recover such excess. *Held* that, inasmuch as settlement of accounts was contemplated or was necessary under the provisions of the deed of mortgage, and such deed did not contain a provision reserving the adjustment of any sums paid by the mortgagees in excess of the amount of the Government demand at the time of the execution of such deed to the time when the mortgage tenure should be brought to an end, the suit was not premature

MORTGAGE—*continued.*

2. CONSTRUCTION—*continued.*

and could be entertained. NIKKA MAL v. SULAIMAN SHIKOH GARDNER I. L. R., 2 All., 193

93. ——— Mortgagor and mortgagee—*Acts of mortgagor prior and subsequent to mortgage*—A mortgagor's acts prior to the date of the mortgage bind the mortgagee, but his subsequent acts do not bind the latter, unless they are done by the mortgagor as agent for the mortgagee. KRISHNAJI LAKSHMAN RAJVADE v. SITARAM MURARRAV JAKHI I. L. R., 5 Bom., 496

94. ——— *Suit for arrears of interest and sale—Suit before principal sum became due—Right of suit*—A suit for arrears of interest accrued due on a mortgage and for the sale of the property comprised therein was brought before the date fixed for the repayment of the principal. The mortgage provided that, on default of payment of interest on the due date, interest should be chargeable on the arrear, and also that interest at an enhanced rate should be chargeable on the principal. *Held* that the plaintiff was not entitled to sue for the arrears of interest or to bring the mortgaged premises to sale before the principal became due. KANNU v. NATESA I. L. R., 14 Mad., 477

95. ——— *"Asmani sultani," Meaning of the words—Destruction of subject of mortgage—Cost of rebuilding by mortgagee*—A mortgage-deed stipulated that, in the event of the mortgaged house being destroyed "by asmani

[illegible]

heaven within the meaning of the term asmani. SAKHARAMSHET v. AMTHA DEVJI GANDHI [I. L. R., 14 Bom., 23

96. ——— *Intention of parties—Mortgagee to have possession for ten years and to receive profits in lieu of interest—Mortgagor to recover possession in the year he paid the money after the expiration of the period—Power of sale—Cl 3, s. 15 of Bom. Reg V of 1827—Mortgagee's personal remedy against the mortgagor—Limitation.*—Where a mortgage-bond contained a stipulation that the mortgagee should

[illegible]

of Bombay Regulation V of 1827, he had no power of sale. The mortgagee having brought his suit within three years from the expiration of the stipulated period of ten years,—*Held* that the mortgagee's personal remedy against the mortgagor was not time-barred IDRUS v. ABDUL RAHIMAN [I. L. R., 16 Bom., 303

97. ——— *Hypothecation of "our zamindari property"—Ascertainment of mortgagors' zamindari interest at date of mortgage—Ambiguity in deed—Act IX of 1872 (Contract Act), s. 29—Act IV of 1882 (Transfer of Property*

[illegible]

the words "our zamindari property" were sufficiently certain, or at any rate were capable of being made certain, by the proof of the mortgagors being at the date of the mortgage-deed the owners of a specific zamindari interest; and that the mortgage was therefore not void for uncertainty *Kanhia Lal* v. *Muhammad Husain Khan, I. L. R, 5 All., 11; Bishen Dayal* v. *Udit Narain, I L. R., 8 All., 486, Ramsidh Pande* v. *Balgobind, I. L. R., 9 All., 158, Rae Manik Chand* v. *Behari Lal, 2 N. W., 263; Deoji* v *Pitambar, I L. R, 1 All, 275, Tailby* v *Official Receiver, L. R., 13 Ap. Cas, 523*, and *Tadman* v. *D'Epineuil, L. R., 20 Ch. D., 758*, referred to. SHADI LAL v. THAKUR DAS [I. L. R., 12 All., 175

98. ——— *Kanam mortgage—Suit for sale of mortgaged property—Rights of kanamdar to sue for amount of kanam and for sale of mortgaged property in default of payment.*—

[illegible]

of it, is a usufructuary mortgage; and there is [illegible] that it is a [illegible] servation in [illegible] *15 Mad, 366,*

[I. L. R, 22 Mad, 350

99. ——— *Transfer of Property Act, ss 40, 58 (b), 69, 100—Charge—Lien—Transfer of interest in immoveable property—"Arh"—"Mustaghraq"—Power of sale in default—Bond-fide purchaser for value without notice—Rights of purchaser at sale in execution of decree.*—In January 1883 a decree was obtained upon a

[illegible]

of payment, but it contained a covenant prohibiting alienation until payment, and a stipulation that, in

MORTGAGE—*continued.*

2. CONSTRUCTION—*concluded.*

the event of the property specified being destroyed

the sale of mortgaged property. In 1885, before any steps had been taken in execution of the decree, the same property was sold in execution of a simple money-decree against the obligor, and the purchaser obtained possession. It was found as a fact that at the time of the sale the bond of October 1875 and the decree thereon of January 1883 were not notified, but through no fault of the obligee decree-holder, and that the purchaser was a *bonâ fide* transferee for value without notice of the bond and decree *Held* that the words "arh" and "mustaghraq" used in the bond implied a power of sale in default and denoted a mortgage without possession: and the transaction, though entered into prior to the passing of the Transfer of Property Act (IV of 1882), must be regarded as amounting to a simple mortgage as defined in s. 58 (*b*) of that Act, and not as merely creating a charge as defined in s 100, and that consequently the rights of the obligee must prevail over those of the subsequent *bonâ fide* purchaser for value without notice of the bond and the decree thereon. *Held* also by MAHMOOD, J., that the title

the terms of the decree of January 1883 in respect of the property which he had purchased, and could not prevent the property being sold under that decree except by paying up the decretal money. *Unnopoorna Dassee* v. *Nufur Poddar*, 21 *W. R.*, 148, and *Enayet Hossein* v. *Giridhari Lal*, 2 *B. L. R.*, *P. C.*, 75 12 *Moore's I. A*, 366, referred to. *Per* MAHMOOD, J.—The power of sale mentioned in s. 58 (*b*) of the Transfer of Property Act is not a power in the mortgagee to bring the mortgaged property to sale independently of a Court. The observations on this point of MUTTUSWAMI AYYAR, J., in *Kanjasami* v. *Muttu Kumarappa*, *I. L. R.*, 10 *Mad*, 509, of BIRDWOOD and JARDINE, JJ., in *Khemji Bhagvandas* v *Rama*, *I. L R.*, 10 *Bom*, 519, and of PETHERAM, C.J, in *Sheoratan Kuar* v *Mahipal Kuar*, *I. L. R*, 7 *All.* 258, dissented from. The nature of simple mortgage, hypothecation, charge and lien discussed. *Alibi* v. *Nana*, *I. L. R.*, 9 *Mad.*, 218, *Martin* v. *Pursram*, 2 *Agra*, 124, *Raj Coomar Ram Gopal Narain Singh* v. *Ram Dutt Chowdhry*, 13 *W. R.*, *F. B.*, 82; *Moti Ram* v. *Vitai*, *I. L. R*, 13 *Bom*, 90; *Gopal Pandey* v. *Parsotam Das*, *I. L. R*, 5 *All.*, 121; *Shib Lal* v. *Ganga Prasad*, *I. L R*, 6 *All*, 551; *Girdhar Ranchodlal* v. *Hakamchand Revachand*, 8 *Bom.*, 75, *Sobhagchand Gulabchand* v. *Bhaichand*, *I. L. R.*, 6 *Bom*, 193; *Naran Purshotam* v. *Daolatram Virchand*, *I. L. R.*, 6 *Bom.*, 538; and *Durga Prasad* v. *Shambhu Nath*, *I. L. R.*, 8 *All.*, 86, referred to KISHAN LAL v. GANGA RAM

[I. L. R., 13 All., 28

MORTGAGE—*continued.*

3. POSSESSION UNDER MORTGAGE.

100. ———— **Rights of mortgagees in possession.**—A mortgagee taking possession under the terms of the mortgage is entitled to have the property in the same condition as it was in when it was mortgaged. GOBIND CHUNDER BANERJEE v. WISE

[12 W. R., 19

101. ———— **Covenant for possession by mortgagee**—*Omission to give possession—Right to sue for mortgage-money.*—A deed of mortgage and conditional sale contained a covenant for possession by the mortgagee during the mortgage term Possession was withheld, though the mortgagor received the mortgagee-money. *Held* that an action would lie by the mortgagee against the mortgagor for recovery of the principal and interest money advanced ODDIT PURKASH SINGH v. MARTINDELL

[4 Moore's I. A., 444

102. ———— **Obstruction in getting possession**—*Usufructuary mortgage—Right of mortgagee to sue for mortgage-money—Transfer of Property Act (IV of 1882), s. 68 (b) and (c).*—A usufructuary mortgagee, to whom possession of

serted in the deed of mortgage was that, if "on the part of the mortgagor, or other persons, any kind of dispute or any interference or obstruction took place in obtaining of possession by the mortgagee of the mortgaged property," the mortgagee should be entitled to sue for the mortgage-money. *Held* that such condition contemplated the case of the mort-

mortgagee was not entitled by virtue of such con-

money only if he had been deprived thereof by or in consequence of the wrongful act or default of the mortgagor, and not if he had been deprived thereof by or in consequence of the wrongful act or default of other persons, that the sale by the mortgagor was not a wrongful act, there being no condition against alienation, and the sale by a mortgagor of his equity

fore the mortgagee had no cause of action. JHABBU RAM v. GIRDHARI SINGH . I. L. R., 6 All., 298

103. ———— ———— *Mortgage by conditional sale—Mortgagee in possession but afterwards dispossessed—Suit for foreclosure and*

MORTGAGE—*continued.*

3. POSSESSION UNDER MORTGAGE —*continued.*

recovery of possession—Nature of possession—Right of redemption.—A mortgagee by conditional sale who was put into possession of the mortgaged property from the date of the mortgage and who is entitled under the mortgage-deed to hold possession is entitled, when wrongfully dispossessed, to secure pos-

104. Dispossession of mortgagee —*Usufructuary mortgage—Construction of deed—Suit for money lent on dispossession.*—The plaintiff sued to recover money due on a mortgage-bond alleged to have been executed by the defendant's late husband *S*, and by his *brother J*, who, however, was relieved by the plaintiff from the debt. The conditions of the bond were that the plaintiff's father should possess the mortgaged property in considera-

debt GYARAM CHUCKERBUTTY *v.* BURODA DABEE [20 W. R., 484

106. ——— Right of mortgagee in possession to proceeds of sale—*Sale for arrears*

107. ——— Mortgagee in possession under an agreement to pay rent to mortgagor—*Usufructuary mortgage—Accidental destruction of mortgaged premises by fire—Right of mortgagor to rent.*—The plaintiff borrowed R1,400 from the defendant, and mortgaged to the latter for eight years a piece of ground with a warehouse

ment, the existence of the warehouse, which produced

[I. L. R., 2 Mad., 187

108. ——— Deprivation of security by wrongful act of mortgagor—*Right to return*

v. PARBUTTEE CHURN DUTT . . . 25 W. R., 52

109. ——— Mortgagee deprived by diluvion of subject of mortgage—*Usufructuary mortgage.*—Where a mortgagee is deprived by diluvion of the possession of land over which he holds an usufructuary lease before he has repaid himself the

110. ——— Mortgagee in possession, Liability of, to protect the mortgaged property from claims under a paramount title

MORTGAGE—*continued.*

4. POWER OF SALE—*continued.*

subsequent mortgagees—Delay in selling—Rescission of notice of sale—Suit by second mortgagee to prevent sale—Offer to redeem joint mortgage—

defendants, on the 31st August 1891, gave notice of sale to the mortgagors, but did not then proceed further in the matter. Three days after this notice, *viz.*, on the 3rd September 1891, the mortgagors mortgaged the property to the plaintiffs for R10,000. On the 18th November 1892 the plaintiffs by letter offered to transfer their mortgage to the defendants or to join with them in selling the property. In the event of their being unwilling to accept either of these proposals, the plaintiffs requested the defendants to render an account of the sum due to them in order that they (the plaintiffs) might, if so advised, redeem the defendants' mortgage. On the 3rd December 1892 the plaintiffs by letter enquired whether the defendants were willing to re-convey the mortgaged property on payment of a certain sum, which was less than the amount the defendants claimed, but they did not positively offer to pay the defendants either that amount or the amount which might be found to be due. In April 1893 the defendants advertised the property for sale on the 27th of that month without giving notice of sale to the plaintiffs, and on that day the plaintiffs filed a suit and obtained a rule, restraining the defendants from proceeding with the sale. In the argument of the rule it was contended for the plaintiffs, first, that the defendants had no power to sell, because their mortgage-deed required previous notice of sale to be given to the mortgagors or their assigns, and no such notice had been given to the plaintiffs who,

1891, three days before the plaintiffs had acquired any interest in the equity of redemption. No further notice was required to be given to any person who at that time was not an assign, in order to enable the defendants to sell under that notice. An assign must take things in the state in which he finds them, and cannot claim to alter rights which have accrued before he has any authority to interfere; (2) that the notice of sale of the 31st August 1891 had not been rescinded by the defendants, who were not bound to give a fresh notice before the sale advertised to be held on the 27th April 1893. The mere fact of a long delay taking place between

MORTGAGE—*continued.*

4. POWER OF SALE—*concluded.*

mortgage. The plaintiffs admittedly had not the money in hand, and the Court would not interfere with a mortgagee's right to sell on the mere chance of the plaintiffs being able to make arrangements to pay the amount due at some uncertain time. Where a mortgage-deed which gave the mortgagee a power of sale contained also a proviso that the remedies of the mortgagors, their heirs, administrators, and assigns in respect of any breach of the clauses or provisions (relating to such sale) or of any impropriety or irregularity whatever in any such sale should be in damages,—*Held* on the authority of *Prichard* v. *Wilson, 10 Jur., N. S., 330*, that the Court would not grant an injunction to restrain the mortgagee from selling the mortgaged property. MUNCHERJI FURDOONJI *v.* NOOR MAHOMEDBHOY JAIRAJBHOY PIRBHOY . . . I. L. R., 17 Bom., 711

5. SALE OF MORTGAGED PROPERTY.

(a) RIGHTS OF MORTGAGEES.

126. -- **Right of mortgagee—** *Remedy on non-satisfaction of claim after sale.*—The right accruing to a lender of money under a mortgage-bond hypothecating land is to have his mortgage-lien on the land declared and the property sold in satisfaction; and if after sale the debt is not satisfied, to proceed against the debtor for the balance. WEBB *v.* RINCHIDEN . 14 W. R., 214

LALLA MITTERJEET SINGH *v.* SCOTT [17 W. R., 62

127. ——— **Sale of whole property for portion of debt**—*Sale of mortgaged property for instalment of bond—Right to, or lien on, surplus proceeds*—Where money is lent upon the security of immoveable property of a nature incapable of division, and the mortgagee, on one of the instalments becoming due, has to sell the entire property, he does not thereby lose all lien over the surplus proceeds. It seems to make no difference that the property is capable of division. RAM KANT CHOWDRY *v.* BRINDABUN CHUNDER DOSS . 16 W. R., 246

128. ——— **Right to elect property to be sold**—*Sale of portion of property pledged.*—

... in a bond is ... the ... LAS ... MED

HUBEEBOOLLAH KHAN . . 8 W. R., 379

129. ——— **Right to surplus sale-**

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

landed property subject to that lien,—*Held* that he was bound to recoup himself from the mortgaged property, and that he could not get any part of the surplus sale-proceeds, unless it were shown that the mortgaged land had not produced enough to satisfy his claim. KALEE DASS GHOSE *v.* LAL MOHUN GHOSE . . . 16 W. R., 306

See FUTEH ALI *alias* NANNA MEAH *v.* GREGORY [6 W. R., Mis., 13

130. ———— **Rights of successive mortgagees**—*Prior sale under second mortgage—Right of purchaser.*—A property was mortgaged in succession to two different persons. Under the latter of the two deeds, a money-decree was obtained and the property sold. Subsequently the earlier mortgagee obtained a money-decree, and caused the mortgagor's rights and interests to be again sold. *Held* that the purchaser at the second sale purchased, not the estate,

131. ———— **Right of prior lien**—*Sale of hypothecated property for money-decree—Lien of subsequent mortgagee with order directing sale—Right of purchaser.*—Where property hypothecated for a debt is sold in execution of a money-decree passed under the bond hypothecating it, without any additional order in the decree for enforcing the lien on the property, and the holder of a subsequent similar bond, who has obtained an

was sold when this purchaser purchased. SHEO PROSUN SINGH *v.* BROJOO SAHOO . 7 W. R., 232

132. ———— *Right of holder of money-decree against subsequent mortgagee after foreclosure.*—*A* executed a bond in favour of *B*, ty. *B* re- aused the the pur- ut in pos- property under a decree for foreclosure of a subsequent mortgage of the same property to him by *A*, brought a

S. C. KUSEEMOONISSA BIBEE *v.* HUROONNISSA BIBEE . . . . . . 15 W. R., 195

133. ———— *Right of holder of money-decree against subsequent mortgagee after*

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

foreclosure.—*A* executed in favour of *B* a simple mortgage of certain property. He afterwards executed in favour of *C* a mortgage by bi-bil-wafa, or conditional sale, of the same property. *C* obtained a decree for foreclosure, and got possession thereunder. *B* then obtained a money-decree against *A*, and in execution seized and sold and became the purchaser of the said property, and was put into possession of it. On *C* suing *B* to recover possession, *B* claimed to be entitled to hold the property by reason of the prior lien which he had under the simple mortgage. *Held* that, as *B* had only got a money-decree and no declaration of his rights as mortgagee, he could not set up a prior lien against *C*. KASIMANNISSA BIBI *v.* HURANNISSA BIBI . 2 B. L. R., Ap., 6

KUSSEEMOONISSA BEEBEE *v.* HURANNISSA BIBI [10 W. R., 468

134. ———— *Suit for money-decree on mortgage.*—An application was made for leave to file a suit brought to recover the sum of R2,300 on a Bengali deed of mortgage . . . a provision six months interest, in and by sale of the said huts recover with interest

inadmissible. The plaint asked for a money-decree. PHEAR, *J.*, refused to admit the plaint. UMASUNDARI DASI *v.* UMACHARAN SADKHAN [6 B. L. R., Ap., 117

135. ———— *Attachment—Notice—Fraud.*—The plaintiffs advanced a sum of money on the security of a simple mortgage of a share in four talukhs, and obtained a simple money-decree. They then caused the mortgaged premises to be attached, but did not proceed to sale. After-

MORTGAGE—continued.

2. SALE OF MORTGAGED PROPERTY—continued.

incumbrance, then the notice of the plaintiff's mortgage given at the execution sale would only affect the appellant's title as purchaser. Priority as between the appellant and the plaintiffs in respect of incumbrances already existing would not be affected by such notice. [illegible] v. [illegible] . . . 9 B. L. R., A. C., 1: 13 W. R., 282

136. ———— *Incumbrance—Attachment.* A [illegible] mortgage of the proceeds of a village was executed by a firm, and the deed stipulated that the mortgagee should appoint a gomasta or agent of their own in the village to make the collections, who was to recover his money, salary and [illegible] from the collections while the property remained on mortgage. A gomasta was accordingly appointed, who received the rents and profits of the village for a year or two, but afterwards permitted the mortgagors to receive them for four or five years. The respondent, who was one of the partners of the firm, did not execute the mortgage, but was cognizant afterwards of the execution of it, and he sued his co-partners and obtained a decree for his share of the assets of the firm. In execution of his decree an attachment issued against the estate. In a suit by the mortgagee for the removal of the attachment,—*Held* that the mortgage was valid at the time of the issue of the respondent's claim, but when he proceeded to enforce that claim by attachment and when he became in the situation of a second incumbrancer, and that, if after that time he permitted the mortgagors to receive any portion of the produce of the estate, he might, with respect to the moneys so received, be postponed to the subsequent incumbrancer. [illegible] v. [illegible]

[2 W. R., P. C., 13: 2 Moore's I. A., 487

137. ———— *Lien on property gained by mortgagor and transferred by him for commuted allowance.*—Where a Mahomedan widow, her two minor sons, and six relatives were entitled by inheritance to certain property originally belonging to a paternal ancestor of the sons, and the six relatives received instead of their shares a commuted allowance,—*Held* that the holder of a money-decree on a mortgage-bond in which the widow and the six relatives had jointly pledged their interest in the property for the payment of money could, as against the sons, sell the seven shares in execution of his decree; it not appearing that the agreement to accept the commuted allowance was irrevocable, or that the agreement had not been entered into with the widow alone. [illegible] v. [illegible] . . 1 C. L. R., 239

138. ———— *Suit to enforce mortgage-lien on property in the possession of a third party—Properties situate in different districts—Money-decree—Execution of decree—Code of Civil Procedure (Act VIII of 1859), s. 12.*—A, the mortgagee, under a bond, of properties situated in districts B and C, sued in the B Court on his bond, and obtained a decree for the mortgage-money and interest, with a declaration that the decree should be satisfied by sale of all the mortgaged property. A had not obtained the permission of the High Court under s. 12, Act VIII of 1859, which was necessary to enable him to proceed against the property in the C district. Having [illegible] all properties comprised in his decree situate within the jurisdiction of the B Court, A under a certificate issued by such Court, obtained an order from the C Court attaching lands included in his decree situate in that district. D intervened, on the ground that he had purchased the same property in execution of another decree of the C Court against the same judgment-debtor, and the property was released from attachment. A then sued D and the mortgagor to enforce his mortgage-lien against the property in the C district. *Held* that the B Court had jurisdiction to give A a decree for the amount of the mortgage-money and interest, though it had not power to enforce the decree against the property in the C district; that the only effect of the decree was to change the nature of the original debt, which was a [illegible] with a [illegible] lien for the mortgage-money and interest, and that, though A could not enforce the lien against the property in the C district under the decree of the B Court, yet, as that property had been sold to a third person, D, he was at liberty to sue D to establish his lien for the mortgage-debt and interest. [illegible] v. [illegible] . I. L. R., 5 Calc., [illegible]: 4 C. L. R., [illegible]

139. ———— *Mortgaged property, Conveyance of, to mortgagee—Subsequent sale of same property under another decree—Suit by mortgagee to recover money advanced on mortgage-bond—Avoidance of conveyance—Lien.*—In 1874 the plaintiff advanced money to F and Z on the security of a mortgage of certain properties. In 1877 the plaintiff took a conveyance of the properties mortgaged to him, in [illegible] of the money due to him under the mortgage [illegible] the consideration-money. At the time of this conveyance, the same property was under attachment under a decree obtained by another person, and the property was, in execution of this decree, put up for sale, and purchased by one G. In a suit brought by the plaintiff on the mortgage-bond to recover the money lent, and asking that the properties might be made liable to satisfy the debt, against F, Z and G, it was held that, the conveyance of 1877 being void against G, the plaintiff was entitled to fall back upon the lien created by the mortgage-bond. [illegible] *v.* [illegible], 5 C. L. R. [illegible], followed. [illegible] v. [illegible]

[I. L. R., 8 Calc., [illegible]

140. ———— *Money-decree—Sale under mortgage-decree—Prior sale under money-decree—Suit for possession.*—On the [illegible] of April 1864 A mortgaged a certain taluk, and on the [illegible] of December 1865 the mortgagee obtained a mortgage-decree on his mortgage. On the [illegible] of April 1867, in execution of a money-decree obtained against A by a third party on the [illegible] of September

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued*

1864) the right, title, and interest of *A* in the talukh was purchased by the defendant who entered into possession. On the 1st of July 1878 the right, title, and interest of *A* in the talukh was sold in execution of the mortgage-decree and purchased by the plaintiff. In these execution-proceedings the defendant intervened, but his claim was disallowed. On the 28th of June 1880 the plaintiff brought the present suit for possession of the talukh *Held* that the plaintiff was not entitled to possession, but should have brought his suit to enforce the mortgage-lien against the defendant. BIR CHUNDER MANIKYA *v* MAHOMED AFSAROO . I. L. R., 10 Calc, 209

141. ——— *Right of purchaser of mortgaged property—Mortgagee purchasing right, title, and interest of debtor*—Plaintiff in 1862 purchased a house of first defendant, which was already hypothecated to second defendant In 1863 second defendant sued first defendant in the Small Cause Court for the debt on account of which the hypothecation had been made, and got a judgment He then had the house attached and put up to auction, bought the right, title, and interest of the judgment-debtor in the premises, and entered and continued in possession. Plaintiff claimed in the present suit to recover possession in right of his purchase in 1862 *Held* that, as first defendant had no interest whatsoever in the property at the date of the plaintiff's purchase, second defendant's purchase was not a purchase from the debtor in part satisfaction of his debt. Second defendant's claim still existed, and he could pursue his remedy, either against the person or the property, and that, as he was in possession, he had a right to demand the liquidation of the debt due to him before submitting to be turned out *Held* also that the obligation of the first defendant gave the second defendant a two-fold remedy one against the person, and the other against the thing. MUNI REDDI *v* VENKATA REDDI 3 Mad., 241

142. ——— *First and second mortgages—Sale of mortgaged property in execution of money-decree obtained by first mortgagee—Effect on second mortgagee's rights—Purchase by one or several joint mortgagees of mortgaged property—Extinguishment of mortgage-debt—Suit for sale of mortgaged property*—In Jan

[illegible]

being paid by them, and mortgaged certain property

[illegible]

MORTGAGE—*continued.*

5 SALE OF MORTGAGED PROPERTY —*continued.*

[illegible]

of the property mortgaged therein and also by the sale of the property mortgaged in *S*'s security-bond. *Held* that, inasmuch as *B*'s decree of January 18[illegible] was a simple money-decree only, *Z*'s purchase thereunder in November 1872 could not be regarded as operating in defeasance of the joint bond of the 3rd May 1872, executed by *Z* and *I*, and that the sale of November 1872 therefore left the rights of the parties wholly unaffected *quoad* that instrument. *Held* also that the effect of *B*'s purchase of the 10 biswas in 1877 upon the joint bond of the 3rd May 1872 was as effectually to extinguish the joint incumbrance thereon as if *H* had been associated with him in buying it; that consequently, when *B* sold the 10 biswas to *D* in 1883, they were free of all incumbrance under the joint bond, and that he passed to her a clean title which she could assert as a complete answer to the present suit in regard to the 64 biswas. BHUP SINGH *v*. ZAINULABDIN [I. L. R., 9 All, 205

143. ——— *Right of second*

[illegible]

could not bring the property to sale in satisfaction of his subsequent charge. DURGA CHURN MUKHOPADHYA *v* CHANDRA NATH GUPTA [4 C. W. N., 541

144. ——— *Payment by*

[illegible]

sell without paying first mortgage.—*B* made two

[illegible]

to the defendant. [illegible] September 1877 *B* made a conditional sale of his zamindari property

[illegible]

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

the decree the property mortgaged to him was advertised for sale on the 20th November 1883. Meanwhile the plaintiff had taken the necessary proceedings to foreclose his conditional sale, and upon the 29th March 1883 the sale was foreclosed. On the 19th November 1883 plaintiff instituted this suit with the object of having it declared that defendant was not entitled to bring to sale the property mortgaged to him. *Held* that by the conditional sale which became absolute upon the 19th March 1883 the plaintiff acquired all the rights that subsisted under the two mortgages of the 10th October 1871 and 10th October 1872, and was entitled to press those securities in his aid as prior incumbrances to that of the defendant, for the purpose of stopping him from bringing the property to sale in execution of his decree before first recouping the plaintiff the amount which the latter found to satisfy and discharge those incumbrances. *Held* further that ... ing the ... decree ... for he ... vour of ... should ... property to sale under his decree in respect of the mortgage of 27th January 1874, when he had satisfied and discharged the two mortgage-bonds held by the plaintiff of the 10th October 1871 and 10th October 1872. ZALIM GIR *v.* RAM CHARAN SINGH [I. L. R., 10 All., 629

145. ——— *Suit for sale of* ...

the amount due to him might be realized by a sale of the mortgaged property, the Courts below dismissed the suit, holding that the plaintiff was not entitled to sell the mortgaged property without redeeming the prior mortgage. *Held* that this decree was erroneous, and that the plaintiff was entitled to an order for sale of the mortgaged property subject to the lien of the prior incumbrancer. The words "immoveable property" in s 58 of the Transfer of Property Act denote, having regard to the definition of "immoveable property" in s. 2, cl. 5 of the General Clauses Consolidation Act (I of 1868), ...

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

rama, I. L. R., 8 Mad., 246; and *Umes Chunder Sircar* v. *Zahur Fatima, I. L. R., 18 Calc., 164 · L. R., 17 I. A., 201,* referred to and approved as to the right of a second mortgagee to a sale subject to the lien of a prior mortgagee. KANTI RAM *v.* KUTUBUDDIN MAHOMED . I. L. R., 23 Calc., 33

See BENI MADHUB MOHAPATRA *v.* SOURENDRA MOHAN TAGORE . . I. L. R., 23 Calc., 795

146. ——— *Civil Procedure Code, ss 354, 355, and 356—Insolvency—Receiver selling a mortgaged property of insolvent—Pur-* ...

property, had been mortgaged to the plaintiff, who was duly cited to appear and prove his debt. The ... insetors. ... pur- ... the plaintiff gave notice of his claim as mortgagee. ... creditors, ... f the ... 1881 ... gaged ... While ... the ... f his decree, the plaintiff recovered possession of the eight ... of the ninth ... who was in this suit to ... s entitled to ... interest the insolvent had in the mortgaged premises was the ... vested in the ... to ... ly ... l; and the defendant, who now stood in *G*'s shoes with notice of the plaintiff's claim, although he might possibly be entitled to redeem the whole nine fields comprised in the mortgage, was bound to deliver possession to the plaintiff (the mortgagee) until that was done. The mortgaged property could not be sold by the Receiver without the consent of the plaintiff (the mortgagee) or paying him off. S 356 of the Civil Procedure Code (Act XIV of 1882) no doubt contemplates the payment of debts secured by mortgage out of the proceeds of the conversion of the in- ... the general creditors; ...

147. ——— *Right to sale of portion of mortgaged property—Death of sole*

MORTGAGE—*continued.*

5 SALE OF MORTGAGED PROPERTY —*continued.*

mortgagee leaving several heirs—Sale of mortgagee's right by one of such heirs—Suit by purchaser for sale of mortgaged property—Act IV of 1882, s 67.—Upon the death of a sole mortgagee of zamindari property, his estate was divided among his heirs, one of whom, a son, was entitled to fourteen out of thirty-two shares The son executed a sale-deed whereby he conveyed the mortgagees' rights under the mortgage to another person In a suit for sale brought against the mortgagor by the representative of the purchaser it was found that the plaintiff acquired, under the deed of sale, only the rights in the mortgage of the son of the mortgagee, though the deed purported to be an assignment of the whole mortgage. *Held* by the Full Bench that the plaintiff was not entitled, in respect of his own share, to maintain the suit for sale against the whole property, the other parties interested not having been joined that, moreover, he was not entitled to succeed, even in an amended action in claiming the sale of a portion of the property in respect of his own share, and that the suit was therefore not maintainable. *Bishan Dial* v. *Manni Ram, I. L R, 1 All, 297, Bhora Roy* v. *Abilack Roy, 10 W R., 476*, and *Bedar Bakht Muhammad Ali* v. *Khurram Bukht Yahya Ali Khan, 19 W. R, 315,* referred to PARSOTAM SARAN *v.* MULU . I. L. R., 9 All., 68

148 ——— — *Redemption of prior mortgage by puisne mortgagee—Sale, at his suit, of mortgaged property, on what terms, and with payment of what incumbrances*—Upon a claim by a puisne mortgagee to redeem prior incumbrances, and in the alternative, for a decree ordering a sale of the property mortgaged, the sale was decreed, with application of the purchase-money to pay incumbrances in their due order, and with redemption by

149. ——— *Mortgagee in possession not paying assessment during famine—Payment of arrears of assessment by person registered as occupant who obtains conveyance from mortgagor—Mortgagee lying by—Acquiescence—Estoppel—Foreclosure, Suit for.*—The plaintiffs, as mortgagees under a mortgage-deed

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

decree. The second defendant only acquired by his

that they stood by while the second defendant was negotiating for his purchase, or had led him by

second defendant, provided they did not postpone doing so beyond the period prescribed by the Act of Limitation. CHINTAMAN RAMCHANDRA *v* DAREPPA [I. L R, 14 Bom., 506

150. ——— *Second mort-*

hypothecating the same property, in execution of the first decree purchased the property himself The surplus of the sale-proceeds was distributed by the Court among other persons who held money-decrees

[I. L. R., 12 All., 537

151. ——— *Holder of two mortgages on the same property suing separately on each.*—There is nothing in the Code of Civil Procedure or in the Transfer of Property Act to prevent the holder of two independent mortgages over the same property, who is not restrained by any covenant in either of them, from obtaining a decree for sale on each of them in a separate suit. SUNDAR SINGH *v.* BHOLU . . I. L. R., 20 All., 322

152. ——— *Effect of sale of portion of mortgaged property under a decree not on the mortgage—Right of mortgagee to have subsequent sale of mortgaged property taking into account the full value of the property previously*

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

such property himself, the whole mortgage is not necessarily thereby extinguished; but, if the mortgagee subsequently seeks to bring the mortgaged property to sale in execution of a decree obtained on his mortgage, he will have to bring into account the full value of the portion of the mortgaged property purchased by him under his former decree. *Sumera Kuar v. Bhagwant Singh, Weekly Notes, All. (1895), 1,* followed. *Ahmad Wali v. Bakar Husain, Weekly Notes, All. (1893), 61; Ballam Dass v. Amar Raj, I. L. R., 12 All., 537,* referred to. CHUNNA LAL *v.* ANANDI LAL

[I. L. R., 19 All., 196

153. ——————— *Mortgage by joint owner—Mortgagee becoming purchaser of part of mortgaged property—Right of redemption of part of mortgaged property—Apportionment of mortgage-debt—Right of mortgagee to keep security entire—Right of purchaser of mortgagee's interest to sue for partition—Joint possession.*—When a

father (A) and brother (B) mortgaged seven lots of land with possession to the father of defendants Nos. 1, 2, and 3. Four of these lots were subse-

In 1889 the defendants Nos. 1, 2, and 3

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

paid, and that a sum of R348-5-0 was due from the

possession of their three-fourths share of the lands

mortgaged in 1872 and not merely a three-fourths share therof, and were also entitled to the whole of the surplus sum of R348 found due by the mortgagees in possession. *Held* also that defendant

mortgaged property should first be restored to the plaintiffs, and then defendant No. 9 might bring a separate suit for partition. NARAYAN *v.* GANPAT. GANPAT *v.* NARAYAN **I. L. R., 21 Bom., 619**

154. ——————— *Prior and subsequent mortgages—Price to be paid by a subsequent*

16 *Bom.*, 486, referred to. *Baldeo Bharthi v. Hushiar Singh, Weekly Notes, All. (1895), 46,* distinguished DIP NARAYAN SINGH *v.* HIRA SINGH

[I. L. R., 19 All., 527

155. ——————— *Prior and subsequent incumbrancers, Rights of, inter se—*

regards the second mortgagee.—A prior mortgagee, K, obtained a decree in a suit upon his mortgage, to which suit a puisne mortgagee, G, was not made a party, and, having subsequently one B attached the decree, and, having put up the property for sale, purchased it himself. G, the puisne mortgagee, having brought a suit for redemption of K's mortgage and sale of the property, K sold his rights to P, who was thereupon added.

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

as a defendant. *G* obtained a decree for redemption and sale. *Held* per BANERJI, *J*, that *P* was entitled to the whole amount which *G* had to pay for redemption of the prior mortgage, with the exception of the amount of the purchase-money paid by *B* at the auction-sale, which amount, and which amount only, would be due to *B* or his representatives. *Dip Narain Singh* v. *Hira Singh*, *I. L. R.*, *19 All.*, *527*, and

for redemption of the first mortgage. *Dip Narain Singh* v. *Hira Singh*, *I. L. R*, *19 All*, *527*, differed from, and *Baldeo Bharthi* v. *Hushiar Singh*, *Weekly Notes*, *All.*, *1895*, *p. 45*, distinguished. WAHID-UN-NISSA *v.* GOBARDHAN DAS

[I. L. R., 22 All., 453

156. ——— *Renewal of mortgage—Priority over subsequent incumbrance—Transfer of Property Act (IV of 1882), s. 10*—Where a mortgagee, subsequently to the execution of the mortgage-deed, takes another mortgage in renewal of the former deed, he has priority over incumbrances subsequent to the first deed. ALAGARAN CHETTI *v.* LAKSHMANAN CHETTI . I. L. R., 20 Mad., 274

157. ——— *Sale by mort-*

5 *Mad*, 38-, and *Panwari Das* v. *Muhammad Mashiat*, *I. L. R.*, *9 All*, *690*, referred to BHIKARI DAS *v.* DALIP SINGH . I. L. R., 17 All., 434

158. ——— *Transfer of Property Act (IV of 1882), s. 88—Suit for sale on a mortgage—Purchase at auction-sale by decree-holder—Further execution sought against other property comprised in the mortgage—Amount for*

amount realized by the sale being insufficient to

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

I. L. R., *19 Calc.*, *4*, referred to MUHAMMAD HUSEN ALI KHAN *v.* THAKUR DHARAM SINGH

[I. L. R., 18 All., 31

159. ——— *Rights of prior and subsequent incumbrancers inter se—Rights of mortgagee purchasing equity of redemption—Right of sale of mortgaged property*—*A* and *B* jointly mortgaged certain immoveable property to *X* by a simple mortgage-deed on the 10th September 1883 They again mortgaged the same property to *X* on the 23rd February 1884. On the 6th August 1885 *A*

Y On

tion of th

1885 *A*

to *Z* On the 20th September 1886 *A* and *B* sold to *X* the property mortgaged to him, and with the proceeds of that sale *X*'s three mortgages were paid off. On the 8th January 1887 *Y* sued *A*, *B*, and *X* for cancelment of the deed of sale of the 20th September 1886, and for sale of the property mortgaged to him under his deed of the 6th August 1885. *Y* did not make *Z* a party to this suit. He did not ask for redemption of *X*'s mortgages nor for foreclosure of *Z*'s mortgage. Upon these facts it was held by EDGE, *C.J.*,

v. *Rambaksh Sheochand*, *I. L. R.*, *10 Calc*, *1035* · *L. R*, *11 I. A*, *126*, *Gaya Prasad* v. *Salik Prasad*, *I L R*, *3 All*, *682*, *Mul Chand Kuber* v. *Lallu Trikam*, *I. L. R.*, *6 Bom*, *404*, *Shantapa* v. *Balapa*, *I. L. R.*, *6 Bom*, *561* ; *Ramu Naikan* v *Subbaraya Mudali*, *7 Mad*, *229* ; *Sirbadh Rai* v. *Raghunath Prasad*, *I. L. R*, *7 All*, *568*, *Janki-Prasad* v. *Sri Maira Mautangui Debia*, *I. L.R.*, *7 All.*, *577* · and *Gangadhara* v. *Sivarama*, *I. L. R.*, *8 Mad.*,

All, *1892*, *p 59*, *Ali Hasan* v. *Dhirja*, *I L. R*, *4 All*, *518* ; *Zalim Gir* v. *Ram Charan Singh*, *I. L. R.*, *10 All*, *629*, and *Umesh Chunder Sircar* v. *Zahur Fatima*, *I. L. R.*, *18 Calc.*, *164* *L. R.*, *17 I. A.*, *201*, referred to, in addition to the cases cited above. *Raghunath Prasad* v. *Jurawan Rai*, *I. L. R.*, *8 All.*, *105*, distinguished. *Vencata Chella Kandian* v. *Panjanadien*, *I. L. R*, *4 Mad.*, *213* ; *Gangadhara* v. *Sivarama*, *I. L. R.*, *8 Mad*, *246* ; and the

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

judgments of MAHMOOD, *J.*, in *Sirbadh Rai* v. *Ragunath Prasad, I. L. R., 7 All.*, 568, and in *Janki Prasad* v. *Sri Matra Mautangui Debia, I. L. R., 7 All.*, 577, dissented from. MAHMOOD, *J.*, *contra.*—Inasmch as a mortgagee cannot bring the mortgaged property to sale without the intervention of a Court, a private purchase by the mortgagee of the rights remaining to the mortgagor in such property, though it may be valid as against the mortgagor, can have no effect in defeating the rights of puisne and mesne incumbrancers Moreover, where a second mortgage to a third party intervenes between the mortgage to and the purchase by the prior mortgagee of the rights of the mortgagor, such intermediate mortgage prevents the merger of the rights of the prior mortgagee as such with those which he might acquire by his purchase. The right of sale is an essential incident of a simple mortgage, and inheres as well in puisne and mesne as in prior mortgagees, subject to the rights of the prior mortgagees The puisne or mesne mortgagee is not bound by the terms of the prior mortgage, or mortgages, but is entitled to bring the property mortgaged to sale, subject to such prior mortgage or mortgages MATA DIN KASODHAN v. KAZIM HUSAIN . . . . I. L. R., 13 All, 432

160. ———— *Prior and subsequent mortgagees—Rights of subsequent mortgagees where prior mortgage is usufructuary, and time has not arrived for redemption—Form of decree.*—*Held* that, where there exists a prior usufructuary mortgage, a subsequent mortgagee of the same property cannot bring the mortgaged property to sale in virtue of his incumbrance until such time as the usufructuary mortgage becomes capable of redemption *Mata Din Kasodhan* v. *Kazim Husain, I. L R., 13 All*, 432, explained and followed AKHRA PANCHAITI v SUBA LAL [I. L. R., 18 All., 83

161. ———— *Transfer of Property Act (IV of 1882), s. 101—Extinguishment of mortgage ...*

[illegible]

rowed part of the purchase-money from the plaintiff, to whom he mortgaged it on the day of the sale. *B* subsequently obtained against *D* and the mortgagor's representative a decree on his mortgage, which comprised a declaration that the sale of 1882 was subject to his lien and brought the property to sale and became the purchaser in execution. The plaintiff now sued *B* and *D* on his mortgage *Held* that the plaintiff's mortgage was entitled to priority over the mortgage of 10th February 1877 to the extent to which the loan secured thereby had gone to discharge the mortgage of 1876. SEETHARAMA v. VENKATAKRISHNAKA . . I. L. R., 16 Mad., 94

162. ———— *Covenant that mortgagee be entitled to enter—Entry, Right of—Mortgage-deed in English form.*—*B* executed a mortgage-deed in the English form in favour of the L Bank, containing amongst other covenants one providing that, upon default, the mortgagee would be entitled to enter into possession of the mortgaged properties [illegible] sister *S*, his [illegible] was entitled [illegible] properties [illegible] mortgage-money became due, the L Bank brought a suit, and, on the 13th of July 1872, obtained a decree by consent. The existence or right of *S* to a share in the properties was not known to the Bank, and she was not made a party to that suit. The Bank, in execution of their decree, caused the mortgaged properties to be sold, and themselves purchased some of them. The sale-proceeds did not satisfy the entire claim. On the 1st of December 1875 *S* sold her share of six annas in the properties to *R* In a suit by *R* against the purchaser of two of the mortgaged properties at the aforesaid sale it was held that the share of *S* in the estate of *B* did not pass to the purchasers, though the Bank purported to have brought the whole sixteen annas in the properties to sale. *R* then brought this suit for the recovery of possession of the six-annas share of the properties, purchased at the sale by the Bank themselves, and which was now in their possession. *Held* that under the covenant in the mortgage-deed above referred to, the Bank were entitled to remain in possession as mortgagees until the proportion of the debt which might legitimately be imposed upon the six-annas share of the properties in their hands was paid. LUTCHMIPUT SINGH BAHADUR v. LAND MORTGAGE BANK OF INDIA . . I. L. R., 14 Calc., 464

163. ———— *Purchase of mortgaged property by mortgagee at judicial sale on leave obtained to bid.*—Where mortgagees executed their decree on the mortgage, and having obtained leave to bid at the judicial sale purchased the property,—*Held* that they could not be held to have purchased as trustees for the mortgagors, the leave granted to bid having put an end to the disability of the mortgagees to purchase for themselves, putting them in the same position as any independent purchasers. MAHABIR PERSHAD SINGH v. MACNAGHTEN . . I. L. R., 16 Calc., 682 [L. R., 16 I. A., 107

DAKSHINA MOHAN ROY v. BASUMATI DEBI [4 C. W. N., 474

164. ———— *Civil Procedure Code, 1882, s. 294—Decree-holder, Purchase by—Satisfaction pro tanto—Mortgagee not trustee for mortgagor in sale-proceeds—Leave to bid at sale in execution when granted—Permission of the Court to decree holder to buy—Practice.*—A mortgagee who has obtained a mortgage-decree,

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

and after obtaining permission to bid at the sale held in execution of such decree has become the purchaser, does not stand in a fiduciary position towards his mortgagor. *Hart* v *Tara Prasanna Mukerji, I. L. R., 11 Calc., 718*, distinguished. A mortgagee in such a position therefore is at liberty to take out further execution for any balance of the amount decreed that may be left after deducting the price for which the mortgaged property was sold, and is not bound to credit the judgment-debtor with the real value of the property to be ascertained by the Court. The permission to a mortgagee to bid should be very cautiously granted, and only when it is found after proceeding with a sale that no purchaser at an adequate price can be found, and even then only after some enquiry as to whether the sale proclamation has been duly published SHEONATH DOSS *v.* JANKI PROSAD SINGH . I. L. R., 16 Calc., 132

165. ——— *Position of mortgagee who has purchased the mortgaged property after obtaining leave to bid* —A decree-holder (a mortgagee) who has, after obtaining leave to bid at a sale, purchased the mortgaged premises is in the same position as an independent purchaser and is only bound to give credit to the mortgagor for the actual amount of his bid *Mahabir Pershad Singh* v. *Macnaghten, I. L R, 16 Calc., 682*, followed. GUNGA PERSHAD *v* JAWAHIR SINGH [I. L. R., 19 Calc., 4

(*b*) MONEY-DECREES ON MORTGAGES.

166. ——— Suit to enforce a lien on land—*Sale of mortgaged premises—Money-decree.*—A suit to enforce a lien on land which has been mortgaged will lie, and the land as it stood at the time of the mortgage free from subsequent encumbrances may be sold, although a decree for money due upon the mortgage has been obtained, and the right, title, and interest of the mortgagor thereto has under such decree been once sold BISWANATH MUKHOPADHYA *v* GOSSAIN DASS BARAMADAK [3 B. L R, Ap, 140

167. ——— *Right of suit against purchaser of moveable property on which there is a lien.*—A suit will not lie against the purchaser of property subject to a lien to recover from him personally the amount of the lien, but the lien is not lost by the sale, and a suit may be brought against the purchaser with the object of obtaining a decree for the realization of the lien by the sale of the hypothecated property. JUGGERNATH *v.* ILAHI . . . . . 3 N. W., 207

land and you may enjoy it, and when I have the means I will redeem the land and pay the debt with interest, and take back the bond."—*Held*

ANNASVAMI *v.* NARRANAIYAN . 1 Mad., 114

169. ——— *Pledge of mortgage-bond—Fraudulent sale by mortgagor—Suit to*

A, representing to *D* that the mortgage was redeemed, sold the land to him, giving him the bond as a title-deed In a suit by *B* against *D* to recover the mortgage amount by sale of the land,—*Held* that *D*, even although a *bonâ fide* purchaser, could not resist the claim. MUTHA *v.* SAMI [I. L. R., 8 Mad., 200

170. ——— Sale under money-decree—*Lien on property mortgaged—Purchase by mortgagee* —When a creditor who holds a bond whereby property is mortgaged elects to take a money-decree, and in execution thereof brings the mortgaged property to sale, he by that sale transfers to the purchaser the benefit of his own lien and also the right of redemption of his debtor. When therefore

171. ——— *Suit on mortgage-bond—Transfer of lien—Third parties.*—Where a mortgagee sues on his bond and takes a money-decree, in execution of which he attaches and

172. ——— *Lien on mortgaged property—Advance to save property from sale.*—A mere money-decree upon a mortgage-bond gives the judgment-creditor the power of selling the mortgaged property with the lien, in the same way as a decree with express power to sell the mortgaged property MOHUN BAGCHI *v.* GIRISH CHUNDER BUNDOPADHYA . . . . 1 C. L. R, 152

MUNBASI KOER *v.* NOWBUTTUN KOER [8 C. L. R., 423

173. ——— *Effect of, on lien* —The fact that a money-decree has been obtained on a bond by which property has been mortgaged does not destroy the lien on that property. It is open to a plaintiff to establish his right on the

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

bond as well as on the decree. HASOON ARRA BEGUM *v.* JAWADOONNISSA SATOODA KHANDAN [I. L. R., 4 Calc., 29

174. ——————— *Lien—Priority.*—The plaintiff had lent money to a Court Ameen, who mortgaged, as security for the repayment of the amount, certain fees due to him then in deposit, and certain fees which might hereafter be deposited on his account. Those fees were subsequently attached

plied, in execution of his decree, to have the fees paid out to him, but his application was refused on the ground of the defendant's attachment. In a suit to recover the sums in deposit, and to have it declared that the plaintiff's lien on them was prior to that of the defendant,—*Held* that the plaintiff's mortgage gave him priority, and that he was not barred from bringing the present suit by his having already sued to recover the amount and obtained a mere money-decree. LALA TILAKDHARI LAL *v.* FURLONG . . . 2 B. L. R., A. C., 230

S. C. LALLA TEELUCKDAREE LALL *v.* COURT OF WARDS . . . . 11 W. R., 149

175. ——————— *Lien on mortgaged property—Form of decree.*—A mortgagee by way of simple mortgage cannot assert his lien on the property mortgaged, as against a subsequent mortgagee by way of conditional sale who had foreclosed, if the decree passed in favour of the former on his mortgage bond does not provide for its satisfaction from the sale of the mortgaged property. RAM CHUNDER MISSER *v* KALLY PROSONNO SINGH [2 Hay, 625

176. ——————— *Sale in execution of decree on mortgage-bond—Lien on mortgaged property.*—In a suit for possession of property which plaintiff's vendor (*K*) had purchased from one *A*, *R K*, the defendant in possession, claimed to be entitled to retain possession as purchaser under a sale in execution of a decree against *A*, which

entitled to remain in possession RAM KANT ROY *v.* RAJ KISHORE DEB . . . 24 W. R., 94

177. ——— Effect of taking money-

SAHAI SINGH [B. L. R., Sup. Vol., 72: 1 W. R., 315

Distinguished in BECKWITH *v.* UMESH CHUNDER ROY . . . . . . 3 W. R., 110

Followed in BHUGWAN DOSS *v.* NUBEE BUKSH [7 W. R., 31

GOUREE SINGH *v.* FUZL HOSSEIN [15 W. R., 313

RADHA GOBIND SURMAH *v.* UMBER ALI [15 W. R., 27

AKBUR ALI *alias* AGA MIRZA *v.* AMEEROONISSA [11 W. R., 225

ACHUMBIT THAKOOR *v.* CHOONEE LALL CHOWDHRY . . . . . 10 W. R., 27

FRENCH *v.* BARANASHEE BANERJEE 8 W. R., 29

BINDABUN CHUNDER SHAHA *v.* JANEE BEEBEE [6 W. R., 312

RAMNATH RAM *v.* DEEN DYAL RAM [W. R., 1864, 311

178. ——————— *Right of lien—Purchasers.*—A mortgagee who obtains a simple money-decree upon a bond by which property is mortgaged to him as a collateral security does not retain his lien on the property mortgaged after it has passed into the hands of third persons. SAWRUTH SING *v.* BHEENUCK SAHOO [14 B. L. R., 422 note: 12 W. R., 522

GOLUCK MONEE DEBIA *v.* RAM SOONDUR CHUCKERBUTTY . . . . 9 W. R., 82

RADHA GOBIND SURMAH *v.* UMBER ALI [15 W. R., 27

179 ——————— *Effect of assignment of judgment-debt—Sale on property on which there is a lien—Civil Procedure Code, 1859, s. 270.*—A simple decree for money upon a bond by which immoveable property is mortgaged carries with it a lien upon the property mortgaged, and that lien continues as an incident to the debt when it passes from a contract-debt into a judgment-debt, and it

money, and thereupon the property becomes thenceforth discharged from the lien. If after the rejec-

MORTGAGE—*continued.*

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RAJ CHUNDER SHAHA v. HUR MOHUN ROY [22 W. R., 98

180. ——— *Rights of purchaser.*—The purchaser, of a simple money-decree passed on a bond hypothecating property does not merely by his purchase acquire a lien upon the property. GANPAT RAI v. SARUPI [I. L. R., 1 All., 446

181. ——— *Sale of property for money-decree—Lien for prior hypothecation.*—The fact that property is sold under a decree [illegible]

a lien. JUGGUN NATH v. KOMUL SINGH [3 N. W., 123

182. ——— *Registration Act, 1866, s. 53—Loss of lien.*—The taking a [illegible]

decree be made under s. 53 or in a regular suit. Where the property mortgaged has passed into the hands of third parties, there is nothing in the fact that the mortgagee had obtained a decree on the bond to prevent him from bringing a separate suit against the transferees. EMAM MOMTAZOODDEEN MAHOMED v. RAJCOOMAR DAS. HARANCHUNDER GHOSE v. DINOBUNDHOO BOSE [14 B. L. R., F. B., 408: 23 W. R., 187

183. ——— *Sale of hypothecated property for money-decree—Rights of incumbrancers.*—R. N. executed in 1864 a security-bond in favour of K. L., in 1865 a second bond in favour of the defendant, in 1866 a third bond in favour of K. L., and in 1867 a fourth bond in favour of the [illegible]

proceedings could not be held to be void, nor the plaintiff's purchase a nullity. *Held* that what passed to the plaintiff was the property hypothecated, of which he became owner and *primâ facie* entitled to possession, having purchased at the instance of a first incumbrancer, and that defendant's lien could not protect him in possession. KAMESSUR PERSHAD v. DOWLUT RAM . . . 19 W. R., 83

184. ——— *Sale in execution of decree on mortgage-bond—Purchaser, Right of.*—Nothing passes to the auction-purchaser at a sale in execution of a money-decree but the right, title, and interest of the judgment-debtor at the time of the sale. Where therefore a decree given under s. 53, Act XX of 1866, declared the right of the [illegible]

bond to defeat a second mortgage. AKHE RAM v. NAND KISHORE . . . I. L. R., 1 All., 236

185. ——— *Mortgagee's lien—Registration Act (XX of 1866), s. 53.*—A and B, [illegible]

186. ——— *Sale in execution of decree—Purchaser, Right of—Condition against alienation.*—Where the holder of a simple [illegible]

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY—*continued.*

attachment and sale ...

closure. *Rajah Ram* v. *Baines Madho, 5 N. W., 81*, impugned. KHUB CHAND v. KALIAN DAS [I. L. R., 1 All., 240

187. ——— *Lease granted by obligor, Avoidance of—Sale in execution of decree.*—An obligee ...

... *Semble*—That even if the sale- ...

[I. L. R., 1 All., 433

188. ——— *Usufructuary mortgage—Execution of decree on money-bond—Lien.*— ... a perio... repay h... out of ... satisfie... by the lessor and obtained a decree, by executing which he realized from time to time nearly the whole sum due *Held* that the decree substituted another means of recovery for the one previously given, and if he chose to recover the greater part of his due under a decree which, in the place of his farming lease, gave him power to sell the property leased to him, he could not retain his former status as well. ISSUR CHUNDER SEIN v. KENARAM GHOSE [14 W. R., 463

189. ——— *Money-decree, Sale under—Purchaser of property subject to mortgage.*—Plaintiff and defendant No 5 had mortgages over the same property, the mortgage of the latter being prior to that of the former. ...

stances the mortgagor's rights and interests sold as above amounted only to the equity of redemption, and the sale did not extinguish plaintiff's right under the subsequent mortgage, and that the purchaser could be entitled to retain possession only in case of his paying off plaintiff's lien. DEO CHAND SAHOO v. TEELUCK SINGH . . . 14 W. R., 238

190. ——— *Suit for possession by purchaser at sale in execution of decree on a mortgage, against mokurari tenure-holder of later date.*—At a sale in 1871, in execution of a decree upon a mortgage, dated 3rd May 1867, *A* purchased the mortgaged lands, the existence of a mokurari granted in 1868 having been notified at the sale. *Held* that a suit by *A* ...

... 2 *W. R.*, ... *Golam* ... v. *Sheo* ... KOKIL SINGH v. DULI CHUND MITTERJEET SINGH v. DULI CHUND . . . 5 C. L. R., 243

191. ——— *Execution of decree on mortgage—Sale in execution of mortgage-decree.*—On the 9th June 1869 ...

A mortgaged the whole 10 annas to *C*, and on the 14th December 1875 sold a 1-anna share of the ...

remaining 4 annas of the mokurari to the plaintiff. Two annas of the 10 annas share of the mokurari mortgaged to *C* being subject to the dar-mokurari ...

lower Court on remand should find the plaintiff to be in possession of such share, then a decree for rent should be passed in the plaintiff's favour, leaving the appellants to take any steps which they might be advised. *Phool Chand* v. *Kalian Dass, I. L. R., 1* ...

... [6 C. L. R., 5..

192 ——— *Money-decree, Effect of sale by mortgagee of mortgaged property under—Assignment—Purchaser at sale in execution of decree, Right of—Lien.*—*A* mortgaged property

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

to *B*, who assigned his mortgage to *U*. *U*, under

second assignment duly registered from *C*, sued upon it, and, obtaining a decree against the mortgaged property, put it up for sale, and became the purchaser in his own nan[illegible]
obstructed by [illegible]
execut on of [illegible]
successful pu[illegible]
although the mere taking of a money-decree for a mortgage-debt does not extinguish the lien, still,

mortgagee has proceeded to satisfy his judgment-debt What the mortgagee really seeks when he proceeds to sell, whether under a decree for sale or a simple money-decree, is to obtain satisfaction out of his security,—in fact, to enforce his lien, and although

NARSIDAS JITRAM *v.* JOGLEKAR
[I. L R., 4 Bom., 57

193. ——— *Money-decree—Difference between execution on money-decree on a*

veyance to the purchaser. [illegible]
execution between a money-decree upon a mortgage and one not upon a mortgage is that where the mortgaged lands are attached under the former, their sale is deferred until six months or some other reasonable period expires, in order to give the mortgagor an opportunity to redeem, which he would have in a suit for foreclosure or redemption. HARI *v* LUCKSHMAN
[I. L. R., 5 Bom., 614

194. ——— *Mortgage-decree—Lien—Sale in execution—Purchaser.*—Where

decree and sells the mortgaged property under it, he is precisely in the same position as far as his own interest is concerned In either case the purchaser at the execution sale takes the property sold free from the mortgagee's lien But where the mortgagee puts up the mortgaged property for sale at a time when the mortgagor has no longer any interest in the property, then nothing passes by the sale, and the exe-

and explained. RAMANATH DASS *v.* BOLORAM PHOOKUN
[I. L. R., 7 Calc., 677: 9 C. L. R., 233

195 ——— *Mortgage-decree—Sale in execution—Mortgagee's lien*—A mortgagee who elects to take a money-decree, and becomes himself the purchaser of the property mortgaged at a sale in execution of that decree, may be [illegible]

prior money-decree. *Dossmoney Dossee* v. *Jonmenjoy Mullick, I. L R., 3 Calc., 363*, overruled. JONMENJOY MULLICK *v.* DOSSMONEY DOSSEE
[I. L. R., 7 Calc., 714: 9 C. L. R., 353

196. ——— *Subsequent suit by mortgagee to enforce his lien on the property mortgaged*—The plaintiff, a mortgagee of certain specific property, given as security for an advance, obtained a money-decree against the representatives

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

lien against the property pledged. RAJKISHORE SHAW *v.* BHADOO NOSHOO . I. L. R., 7 Calc., 78

197. ———————— *Purchase by mortgagee.*—*K D*, a Hindu widow, by deed appointed *R S* to be her general mooktear, for the conduct of certain suits in her name which were pending in respect of the estate of her deceased husband. By this deed, dated September 25th, 1858, she covenanted to repay him, within two months of the successful termination of the suits, "all moneys properly disbursed by him on her account, etc.," and also to pay him an additional sum as remuneration to himself. *R S* entered on the conduct of her business, and advanced certain moneys on her account; and in October 1859 *K D* executed in his favour a second deed, by which she mortgaged to him her share in the estate of *R H*, deceased, which was in the hands of his executors, "and my decrees, 24 and 25, in the Zillah Court, and the decree in the Supreme Court, and the right and interest of all the said de-

a share of a certain talukh, of a share of a house in Calcutta, and of a certain sum of money, and *K D* was declared to be entitled to one moiety thereof *K D* afterwards obtained an order for possession, and held possession of the said talukh until August 1866 *R S* continued the conduct of *K D*'s business, and advanced more money on her account, in respect of which, on May 31st, 1865, he brought a suit against her; and on September 21st, 1865, obtained a decree in his favour. Under this decree, he attached the right, title, and interest of *K D* in the estate of *R H*, and on 25th June 1866 it was put up for sale, and purchased by *R S* himself. In a suit brought by

198. ———————— *Lien of mortgagee on sale of right, title, and interest of mortgagor—Writ of fi. fa.—Purchase at Sheriff's sale at instance of mortgagee.*—*N*, *M*, and *G* borrowed

was not sufficient to show that such agreement had been entered into Under a writ of *fi. fa.* issued previously to the mortgage of 1864,—*viz.*, on the 23rd of March 1864,—in a suit against *M* and *N*, the Sheriff sold to *A*, on the 7th July 1864, the right, title, and interest of *M* and *N* in the mortgaged property. Assuming that an agreement to mortgage had been entered into in 1863, *A* had no notice of such agreement. After this a writ of *fi. fa.* was issued by the Sheriff, at the instance of *B*, in execution of a decree which *B* had caused to be entered upon the bond of May 1863, and under that writ the Sheriff, on the 22nd February 1866, sold the right, title, and interest of *N*, *M*, and *G* in the mortgaged property, and *A* became the purchaser. The purchase-money at this sale was paid to *B*, and *A* entered into possession of the property. In a suit by *B*

must be taken to have operated against the share of *M* and *N* from the date when it was issued; that even if there was an agreement to mortgage, as alleged, then, although as against *N*, *M*, and *G* themselves, a Court of Equity would treat such agreement as equivalent to an actual mortgage, yet it would not do so as against a purchaser under the *fi. fa* without notice; and that the sale of the 7th July 1864, therefore, passed the shares of *M* and *N* to *A* free of any rights or equities of *B*. Further, that the sale by the Sheriff of the 22nd February 1866, having been effected at the instance of *B* for the purpose of realizing the mortgage-debt, was operative, as between *B* and *A*, to pass to *A* the entire shares of *N*, *M*, and *G* in the property free of *B*'s mortgage-lien. *Held* on appeal that, no agreement to mortgage being established, the sale by the Sheriff to *A* in 1864 overrode

her mortgage, and *B* having received the purchase-

separately. To allow him to do so would deprive the mortgagor of a privilege which is an equitable incident of the contract of mortgage,—namely, a fair allowance of time to enable him to redeem the property. BHUGGOBUTTY DOSSEE *v.* SHAMACHURN BOSE . . . . I. L. R., 1 Calc., 337

199. ———————— *Priority of mortgage—Sale to enforce lien on land.*—On the 15th July 1864 two undivided brothers executed a mortgage of their joint property to the plaintiff for R500, and on the 8th January 1868 they executed another mortgage of the same property for R1,000 to the defendant, who registered it under Act XX of 1866. In August 1871 a suit was brought against the brothers by the plaintiff on the mortgage of

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

1864, and a decree for the sum due was made in ... due was not ...d property ...operty was ... decree and ... y put into possession. In 1871 a suit was brought against the brothers on the mortgage of 1868 by the defendant; a decree was made similar to that in the above- ... and it was ... was, there- ... suit, and ... This suit was then brought by the plaintiff, the first mortgagee and purchaser, to eject the defendant, the second mortgagee and purchaser, and, the lower Appellate Court making a decree in favour of the plaintiff, the defendant filed th s second appeal. *Held* that, the plaintiff having bought the rights and interests of the mortgagors under a sale held prior to the sale to the defendant, the mortgagors had no right or ...

200. ——————— *Mortgage for securing payment of rent—Decree by Revenue Court for arrears of rent—Decree time-barred—Effect of decree on mortgage—Merger—Suit for sale of mort-* ...

... the Revenue Court for arrears of rent, and the de- ...

... security was not lost because the execution of the decree for rent was time-barred, the only effect of which was that the debt was not recoverable in execution, but the debt existed nevertheless so far as to enable the amount secured by mortgage to be recovered by suit in the Civil Court, so long as such suit was not barred by limitation. EMAM ... ...*Dass*, ... the ...orce- ... to

[I. L. R., 9 All., 23

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued*

(c) PURCHASERS.

201. — **Effect of sale of mortgaged property**—*Rights of purchaser.*—By a sale of mortgaged property in execution of a decree obtained by a mortgagee against the mortgagor upon the mortgage the interest both of the mortgagor and mortgagee passes to the purchaser. But by a sale of ...

See KHEVRAJ JUSRUP *v.* LENGAYA

[I. L. R., 5 Bom., 2

SHESHGIRI SHAMBAG *v.* SALVADAR VAT

[I. L. R., 5 Bom., 5

and SHYAMA CHURN BHUTTACHARJEE *v.* ANANDA CHANDRA DAS . . . 3 C. W. N., 323

202. ——————— *Discharge of encumbrance by intending purchaser—Bonâ fides.*—*A*, having mortgaged land to *B*, agreed to sell it to *C* and ...

... position of the mortgagee whom he had paid off, and that the sum constituted a charge on the land. SYAMALARAYUDU *v.* SUBBARAYUDU

[I. L. R., 21 Mad., 143

203. ——————— *Title of purchaser—Transfer of Property Act (IV of 1882), s. 99—Money-decree obtained by mortgagee.*—Prior to passing of the Transfer of Property Act, ...

... purchasing mortgaged property *bonâ fide* at a sale in execution of a money-decree obtained by the mortgagee against the mortgagor obtains a good title free from the mortgage lien, unless the sale is made subject to it. HUSEIN *v.* SHANKARGIRI

[I. L. R., 23 Bom., 119

204. ——————— *Mortgaged property sold subject to right to redeem—Purchase as agent.*—When mortgaged property is sold at ...

205. ——————— *Priority of debt on sale after hypothecation*—Land subse-

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

quently sold is liable for a debt for which the land was previously hypothecated SADAGOPA CHARIYAR v RUTHNA MUDALI . . . 5 Mad., 457

206. —— —————— *Lien—Right of purchaser—Purchase by mortgagee*—*A*, being indebted to *B*, bound himself by deed not to alienate his rights in certain property until his debt to *B* was satisfied; if he did alienate, provision was made for a decree to issue and to be executed *A* subsequently gave a patni of the property to *C*. After the creation

having been created prior to his purchase from *B*, and the lien possessed by *B* had not passed to him. ERSKINE v. DHUN KISHEN SEIN . 8 W. R., 291

SOONEY RAM MARWAREE v. BYJNATH KOOER [10 W. R., 88

See SOUJHAREE COOMAR v. RAMESHUR PANDA. RAMESHUR PANDA v. SOUJHAREE COOMAR [4 W. R., 32

207. ———————— *Effect of subsequent mortgage—Merger.*—A creditor holding a mortgage on the lands of his debtor does not necessarily surrender that mortgage, or lower its priority, by taking a subsequent mortgage, including the same lands with other lands, for the same debt. *Whether the earlier mortgage becomes merged and* extinguished or not is a question of intention. GOLUKNATH MISSER v. LALLA PREM LAL [I. L. R., 3 Calc., 307

208 —————— *Sale in execution of decree—Purchase subject to mortgage securities—Extinguishment of lien on purchase by mortgagee.*—Defendant No. 1 (*G C*), on 9th August 1863, borrowed money from plaintiff upon a bond, hypothecating property by way of simple mortgage. On 27th August 1867, he executed a similar instrument in favour of defendant No. 2 (*G B*) on a further loan. On 13th May 1867, he executed a second bond in favour of plaintiff for the amount

whether plaintiff's first security was extinguished by his taking a second security, covering the original debt with interest, would depend upon the intention of the parties, which, in this case, was shown by the original bond having remained in the possession of the creditor. GOPEE BUNDHOO SHANTRA MOHAPATTUR v. KALEE PUDO BANERJEE . . 23 W. R., 338

209. ———————— *Extinction of charge—Intention of parties—Presumption.*—Whether a mortgage, paid off, has been kept alive or extinguished, depends upon the intention of the parties; the mere fact that it has been paid off not deciding the question whether or not it has been extinguished. Express declaration of intention will cause either the one result or the other, and in the absence of such expression the intention may be inferred, either one way or the other. A lender of

advanced on the later, and the prior instrument had come into the possession of the present mortgagee. *Held* that it must be presumed, in the absence of any expression of intention to the contrary, that the borrower, who claimed to be the owner of the property which he attempted to charge, intended that the money should be applied in paying off and extin-

[I. L. R., 9 Calc., 961: 13 C. L. R., 221 L. R., 10 I. A., 62

210. ———————— *Two mortgages to same mortgagee—Merger of first mortgage—Intention—Decree on second mortgage—Other mortgagees not made parties to suit—Purchaser at auction sale—Priority—Suit by purchaser for possession—Right of other mortgagees to redeem—Form of decree*—On the 15th of July 1870 certain lands were mortgaged by their owners (*S* and his

porting to give possession, was executed to *H*; on the 12th of June 1873 a second mortgage, also purporting to give possession, was passed to the defendant; on the 15th of November, 1877 *H* obtained a

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

contended that he had not been a party to the suit by *H*, and was entitled to possession, and offered to pay to the plaintiff the amount of his purchase-money, or to vacate the lands on satisfaction of his own mortgage-lien. *Held* that the question whether *H's* mortgage of the 15th July 1870 was to be regarded as merged in his second mortgage of 10th June 1873, so as to deprive him of priority of title over the defendant, depended on the intention of the parties to the said mortgage, and there was nothing in the second mortgage-deed to show an intention to forego the benefit of the security created by the prior mortgage-deed of 15th July 1870, which was neither given up to the mortgagor nor cancelled at the time, but remained with *H* until handed over to the plaintiff with the other title-deeds. Under these circumstances, the decree passed on the 15th November 1877 conferred an absolute title on the plaintiff, who purchased at the auction-sale free from all incumbrances created by the mortgagor subsequent to the mortgage of 15th July 1870. The defendant, however, not having been made a party to *H's* suit to enforce his security, did not lose his right of redemption, which still remained to him. The plaintiff therefore purchased the property subject to the defendant's right of redemption. The High Court passed a decree ordering the defendant to deliver up possession to the plaintiff, but that he (the defendant) should be at liberty to redeem by payment to the plaintiff within six months of the amount which would be due on the mortgage of the 15th July 1870, if the same had remained unaffected by the mortgage of 10th June 1873, or, in default, should remain for ever foreclosed. DULLABHDAS DEVCHAND *v.* LAKSHMANDAS SARUPCHAND . I. L. R., 10 Bom., 88

211. ———————— *Merger of right of suit upon a mortgage in a subsequent decree thereon—Questions as to execution between parties to a suit—Act XXIII of 1861, s. 11.*—Upon a mortgage of land made little less than sixty years before the present suit, a decree followed in 1825 to the effect that an account having been taken of what was due on the mortgage, the mortgagor might at any time make a tender of such mortgage-money with interest up to date, and require that the land should be restored. The plaintiff, representing the interest of the original mortgagor, sued for redemption of the mortgage treating the above decree as regulating the rights of the parties from the time when it was made. *Held* that the right of the plaintiff was a right to execute the above decree, subject to the law of limitation, and not a right to obtain a decree for redemption and possession, the law also providing that questions between the parties to a suit relating to execution of decree must be determined by the order of the Court executing it. HARI RAVJI CHIPLUNKAR *v.* SHAPURJI HORMASJI SHET . . . I. L. R., 10 Bom., 461

212. ———————— *First mortgage paid off by third mortgagee in ignorance of second mortgage—Registration—Notice—Intention to keep alive first mortgage presumed.*—*S* mortgage land to *P*. *G* subsequently obtained a decree, by consent, against *S* creating a charge on the same and other land, and registered the decree. *A*, in ignorance of *G's* decree, paid off *P's* mortgage, but took no assignment thereof, and took a mortgage from *S* of all the land covered by *G's* decree. In a suit by *G* against *S* and *A* to enforce payment of his mortgage-debt,—*Held* that *A*, not having had notice of *G's* decree, was entitled to stand as first incumbrancer in respect of the money paid to discharge *P's* mortgage, and that, even if registration was legal notice, an intention to keep alive *P's* mortgage was to be presumed in favour of *A* in accordance with the ruling of the Privy Council in *Gokul Doss Gopal Doss v. Rambux Seochand, L. R., 11 I. A., 126.* GANGADHARA *v.* SIVARAMA

[I. L. R., 8 Mad., 246

213. ———————— *Condition against alienation—Lis pendens.*—The proprietor of certain immoveable property mortgaged it in July 1875 to *K* and in September 1875 to *L*. In October 1878 he sold the property to *K*. In November 1878 *L* obtained a decree on his mortgage-bond for the sale of the property. The suit in which *L* obtained this decree was pending when the property was sold to *K*. *K* sued *L* to have the property declared exempt from liability to sale in the execution of *L's* decree, on the ground that the mortgage to *L* was invalid, it having been made in breach of a condition contained in *K's* mortgage-bond that the mortgagor would not alienate the property until the mortgage-debt had been paid. *Held* that the purchase by *K* of the equity of redemption did not extinguish his security, it being his intention to keep it alive; and that the purchase of this property by *K* while *L's* suit was pending did not prevent *K* from contesting the validity of *L's* mortgage, so far as it affected him on the ground that it was an infringement of the stipulation in the contract between him and the mortgagor. LACHMIN NARAIN *v.* KOTESHAR NATH

[I. L. R., 2 All., 826

214. ———————— Rights of parties on sale—*Prior and puisne mortgagees—Purchase by prior mortgagee of equity of redemption at a Court-sale—Evidence of intention to keep mortgage alive.*—Where a prior mortgagee purchased the equity of redemption at a Court-sale,—*Held*, following the Full Bench ruling in *Mulchand Kuber v. Lallu Trikam, I. L. R., 6 Bom., 404*, that in a contest between himself and a puisne mortgagee he was entitled to fall back upon his original mortgage and to retain possession until his mortgage was paid off. Generally, slight evidence will suffice to show that the prior mortgagee intended to retain the benefit of his mortgage. The fact that the mortgage-deed remains with the mortgagee who purchases, is evidence that he intends to retain the benefit of his mortgage. SHANTAPA *v.* BALAPA . . I. L. R., 6 Bom., 561

215. ———————— *Presumption as to person paying off a prior mortgage—Construction of stipulation in mortgage-deed.*—The

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

presumption, generally speaking, in the absence of any evidence to the contrary, is that a person whose money goes to satisfy a prior mortgage intends to keep alive for his benefit that prior mortgage. Where a mortgage-bond contained the following stipulation "And I shall redeem the mortgage-bond of *A* and deliver it to you to your satisfaction,"—*Held* that it was an indication of the intention on the part of the mortgagee to keep alive the security of *A* in his favour. AMAR CHANDRA KUNDU v. ROY GOLOKE CHANDRA CHOWDHRI

[4 C. W. N., 769

216. —————— *Presumption that person paying off a mortgage intends to keep the security alive.*—In 1861 *B* granted a lease of his zamindari to *A* for 30 years, *A* undertaking to pay off all debts then due by *B*. *B* died in 1882, and his successor sued *A* and obtained a decree that on payment of R1,50 000 *A* should give up possession of the zamindari. This sum having been paid into Court, *A* lost possession of the zamindari. On January 5th, 1875, *A* had mortgaged the whole zamindari, which consisted of 22 villages, to *M* to secure a loan of R1 00 000 borrowed by *A* to pay off the debts of *B* which *A* undertook to pay in 1861. On 27th June 1879 *A*, being indebted to *M* in the *sum of R1,78 000, paid M R1,00,000 and undertook* to pay the balance out of the income of the estate, *M* releasing the 22 villages from the mortgage of January 5th, 1875. On June 28th, 1879, *A* executed a mortgage of the 22 villages to *L*, to secure repayment of R1,30,000. Of this sum, R1,00,000 was borrowed to pay *M*, and R30,000 was a prior debt due by *A* to *L*. Of the R1,00,000 paid to *M*, R27,000 was specially applied to discharge so much of the charge created by the mortgage of January 5th, 1875. On January 30th, 1875, *A* borrowed *from S R43,0 0 0, and mortgaged to her 10 of the 22* villages of the zamindari. In 1885 *S* sued *L* to have her debt declared a first charge on the money paid into Court by the zamindar. The Subordinate Judge held that *L* had a prior claim on the fund, [illegible]

[illegible] which had been applied to pay off the mortgage of January 5th, 1875. RUPABAI v. AUDIMULAM

[I. L. R., 11 Mad., 345

217. —————— *Extinguishment of prior mortgage—Intention—Effect of payment of prior mortgage by subsequent incumbrancer*—The mortgagor's right, title, and interest in certain immoveables in the Dekkan subject to a first and second mortgage were sold in execution of a decree to a purchaser who afterwards paid off the first mortgage. *Held* that, as he had a right to extinguish the prior charge or to keep it alive, the question was what intention was to be ascribed to him; and that, in the absence of evidence to the contrary, the presumption was that he intended to keep it alive

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

[illegible]

intermediate mortgagees, to whom he is not personally liable. But in India a formal transfer for the [illegible]

min v. Stere, 3 Mer., 210, that the purchaser from an owner of an equity of redemption with actual or constructive notice of another intermediate incumbrance is precluded, in the absence of any contemporaneous expression of intention, from [illegible] the [illegible] oney [illegible] tical [illegible] with this where the prior mortgage was not paid off [illegible] but was paid off after- [illegible]

of the party paying off the charge. GOPALDAS v. PURANMAL PREMSUKHDAS

[I. L. R., 10 Calc., 1035
L. R., 11 I. A., 126

218. —————— *Equity of redemption, Purchase of—Payment—Prior mortgagees, Payment to—Keeping securities alive—Attachment of mortgaged property.*—One *P* borrowed from one *L* a certain sum upon a mortgage of certain properties. *He subsequently executed a* second mortgage in respect of some of these properties in favour of one *S*. The legal representative of *L* obtained a decree on *P*'s mortgage. While steps were being taken for the execution of that decree, *P* entered into negotiations with one *R*, from whom he borrowed R40,000 to pay off the prior mortgages upon a mortgage of the properties included in *L*'s mortgage and other properties, and he promised to take a reconveyance of the properties and make over the mortgage-deeds to *R*. Two days before *the mortgage to R, one of* the properties comprised in *R*'s mortgage was attached in execution of a money-decree against *P*, and subsequently purchased by *D*, the defendant No 2, with notice of *R*'s lien. *P* paid off his prior mortgages *on the day following R*'s mortgage. *R* having died, his widow instituted the present suit upon the mortgage, contending that the property purchased by *D* was subject to her claim, he purchasing only the equity of redemption. *D* contended that he purchased the property free from all encumbrances. The Subordinate Judge gave effect to the plaintiff's contention, and made the usual mortgage decree against *P* and *D*. On appeal by *D*,—*Held* that the mere fact that the [illegible] encumbrancers [illegible]

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

[illegible] the [illegible] uite [illegible] case [illegible] *R* [illegible] his benefit. *Gokuldas Gopal Das* v *Puranmal Premsul Das, I L R., 10 Calc., 1035,* relied upon. *Held* further that on the day of attachment of the property purchased by *D* nothing more could be [illegible] to [illegible] of [illegible] ent [illegible] not enlarge the subject of the attachment, and therefore *D* purchased only the equity of redemption in the property DINO BANDHU SHAW CHOWDHURY *v.* NISTARINI DASI . . 3 C. W. N., 153

219. ——— *Second mortgage of property by original mortgagor, and first mortgage paid off*—[illegible] *plaintiff keeping alive the first mortgage.*—On the 10th June 1885, *T* mortgaged the property in dispute to *G* along with some other property. In 1886 [illegible] in dispute along with other property to the defendant and paid off *G's* mortgage. *G* thereupon returned [illegible] the plaintiff, having attempted to take possession, was obstructed by the defendant. Thereupon the plaintiff brought this suit for possession. *Held* that the [illegible] mortgage alive in favour of the defendant. *Gokal-* [illegible] the plaintiff should recover possession on payment to the defendant of a proportionate part of *G's* mortgage-debt, having regard to the value of the property in dispute and that of the other mortgaged properties *Mahomed Shamsool Hoda* v *Shewakram, 14 B. L R., 226 L R., 2 I A., 7,* followed LOMBA GOMAJI *v.* VISHVANATH AMRIT TILVANKAR

[I. L. R., 18 Bom., 86

See YADAO BABAJI SURYARAO *v.* AMBO

[I L. R., 21 Bom., 567

220. ——— *Sale under second of two mortgages—Payment under order of Court without jurisdiction by purchaser to first mortgagee—Extinguishment of mortgage lien.*— [illegible] so for in accepting the money the former mortgagee released the estate from all further liability under his bond. JANKEE PERSHAD *v.* AJOODHYA DOSS

[25 W. R., 257

221. ——— *Purchase by first mortgagee after second mortgage—Set-off of first mortgage against purchase-money—Priority.*—If the first mortgagee purchases the property mortgaged after a second mortgage is created upon it, he does not thereby lose the benefit of his first mortgage if the money due under the first mortgage be set off against the consideration of the sale Accordingly, where a second mortgagee obtained a decree upon his mortgage subsequently to a sale of the mortgaged property to the first mortgagee, who had been allowed to set off the money due to him on his [illegible] SINGH . . . . . 5 C. L. R., 29

222. ——— *First and second mortgages—Assignment by mortgagee—Rights of assignees*—In March 1865 the proprietors of a cer[illegible] to [illegible] 1865 to *S*, retaining possession of the share. In February 1869 the proprietors of the share again mortgaged it to *R* for a further loan. Under this mortgage, *R* was entitled to take the profits of the share in lieu of interest, and the mortgage was redeemable on payment both of the principal sum due thereunder and of that due under the mortgage of

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY
—*continued.*

March 1865, without interest, or the mortgagors were *entitled to redeem a certain portion of the share on* payment of a proportionate amount of such sums, without interest, on a particular day in any year. In August 1872 *S* obtained a decree on the mortgage of April 1865, directing the sale of *R*'s rights and interests under the mortgage of March 1865 in satisfaction of such decree. In May 1874 *R* assigned by sale to *N* his rights and interests under the mortgage of February 1869, retaining possession of the share. In April 1877 *R*'s rights and interests under the mortgage of March 1865 were sold in execution of the decree of August 1872, and were purchased by *S*, who obtained possession of the share. *Held*, in a suit by *N* against *S* to obtain possession of the share in virtue of the assignment of May 1874, that under the circumstances of the case *S* was entitled as against *N* to the possession of the share as first mortgagee. SAHAI PANDEY *v.* SHAM NARAIN

[I. L. R., 2 All., 142

223. ———————— *First and second mortgagees—Purchase of mortgaged property by first mortgagee.*—The first mortgagee of certain property purchased it at an execution-sale. The second mortgagee of such property subsequently sued the mortgagor and the first mortgagee to enforce his mortgage by the sale of such property. *Held* that the first mortgagee was entitled to resist such sale, by virtue of being the first mortgagee, until his mortgage-debt was satisfied; and the fact that he had purchased the property mortgaged to him did not extinguish his mortgage, which must be held to subsist for his benefit. *Gaya Prasad* v. *Salik Prasad, I. L. R., 3 All, 682,* followed HAR PRASAD *v.* BHAGWAN DAS . . . I. L. R., 4 All, 196

224. ———————— *First and second mortgagees—Purchase of mortgaged property by mortgagee.*—*G*, the mortgagee of certain property,

portion subsequently to the mortgage of such property to *G* and *G*'s purchase, and (iii) *M* who had purchased a third portion of such property subsequently to G's purchase, for the enforcement of his lien on such property *Held* by STUART, C.J., OLDFIELD, J. and STRAIGHT, J. (PEARSON, J., dissenting), that, inasmuch as it was the manifest intention of *P* to keep his incumbrance alive, and for his benefit to do so, *P*'s purchase did not extinguish his incumbrance, and he was entitled, as prior incumbrancer, to resist *G*'s claim to bring to sale the portion of the mortgaged property purchased by him. *Held* also by OLDFIELD, J., and STRAIGHT, J. (PEARSON, J., dissenting), that *G*, notwithstanding he had purchased a portion of the mortgaged pro-

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY
—*continued.*

property in *P*'s possession. GAYA PRASAD *v.* SALIK PRASAD. GAYA PRASAD *v.* GAYA PRASAD

[I. L. R., 3 All., 682

225. ———————— *Condition against alienation—First and second mortgagees—*

I. L. R., 2 All., 626, observed on A mortgage is not extinguished by the purchase of the mortgaged

necessary for the first mortgagee of property, when suing to enforce his mortgage, to make the second mortgagee a party to the suit. If the second mort-

moveable property was made to *D*. In July 1875 a

1877 it was again mortgaged to *D*. *N* sued the

his proprietary right to the property, claiming by virtue of his mortgages and the sale of October 1879. *Held*, applying the rules stated above, that *N*'s mortgage of July 1877 could not affect *D*'s right under his mortgage of July 1875, but *N* took subject to such mortgage; nor could the auction-sale of the 20th November 1880, which took place in enforcement of *N*'s mortgage, affect *D*'s prior mortgages; and therefore the condition against alienation

MORTGAGE—continued.

5 SALE OF MORTGAGED PROPERTY *—continued.*

made in *D's* favour had no prejudicial effect on the right of *A* under his auction-purchase that the purchase by *D* of October 1879 did not extinguish his prior mortgages, but such mortgages were still subsisting, and *A* purchased subject to them that there having been no fraud or collusion on *N's* part, *A* must be held to have purchased subject only to *D's* prior mortgages and not subject to *D's* mortgage of October 1877. *Held* also that, as *D's* purchase of October 1879 was made without *N* having had an opportunity of redeeming *D's* prior mortgages, *D's* purchase was subject to *N's* mortgage of July 1877, and therefore could not deprive *A* of what he had purchased at the auction-sale of the 20th November 1880 *Held* therefore that all the relief that *D* was entitled to was a declaration that, as prior mortgagee under the mortgages of July 1874 and July 1875 he was entitled, as against *A*, to retain possession of the property, until such mortgages were satisfied. ALI HASAN *v.* DHIRJA

[I. L. R., 4 All., 518

226. ——— *First and second mortgages—Payment by purchaser of mortgaged property of first mortgage—Right of purchaser to benefits of first mortgage—Right of second mortgagee to bring to sale mortgaged property.*—The purchasers of the equity of redemption [illegible]

[illegible]

Premsukhdas, I. L R., 10 Calc, 1035, followed. *Per* [illegible] the p [illegible] claim [illegible] prope [illegible] *Premsukhdas, I. L. R, 10 Calc, 1035,* followed. *Per* MAHMOOD, *J*, that the ruling of the Privy [illegible]

[illegible]

could not be understood to have acquired rights [illegible]

[illegible]

the position of assignees of that mortgage; that the union of the two capacities could not confer upon them rights higher than those which the mortgage they had paid off created; that a puisne incumbrancer is not prevented by the mere fact of the existence of a prior mortgage from enforcing his security without paying off the prior mortgage so long as such enforcement does not clash with the [illegible]

[illegible]

v. Subbaraya Mudali, 7 Mad., 229; and *Mul Chand Kuber v. Lallu Trikam, I. L. R., 6 Bom., 404,* referred to SIRBADH RAI *v.* RAGHUNATH PRASAD . . . . I. L. R., 7 All, 568

227. ——— *First and second mortgages—Payment by purchaser of mortgaged property of first mortgage—Right of purchaser to benefits of first mortgage—Right of second mortgagee to bring to sale mortgaged property—Registered and unregistered instruments—Optional and compulsory registration—Act III of 1877,* [illegible]

[illegible]

second under a registered deed in favour of *L* and dated in 1880. The registration of both deeds was optional, the former under Act VIII of 1871 and the latter under Act III of 1877. *J* subsequently satisfied the mortgage under the registered deed of 1880, which was delivered to him. *M* then brought a suit to recover the money due to him under the mortgage-deed of 1872 by sale of the mortgaged property. *Held* by OLDFIELD, *J*, that, applying [illegible]

[illegible]

Bhagirath Lal, I. L. R., 4 All, 227, distinguished. Also *per* MAHMOOD, *J.*, that the position of *J* by

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY
—*continued.*

reason of his having paid off the registered mortgage of 1880 could at best be that of an assignee of that mortgage having priority over the mortgage-deed on which the plaintiff was suing, that such priority could not enable him to place the equity of redemption upon a higher footing than it would have been had he not paid off the registered mortgage of 1880; and that, as a consequence, the sale of the property in enforcement of the mortgage of 1872 should be allowed to take place, but subject to the rights of priority which *J* had acquired by reason of his having paid off the registered mortgage of 1880. *Sirbadh Rai* v. *Raghunath Prasad*, I. L. R., 7 All., 565, and *Gokaldas Gopaldas* v. *Puranmal Premsukhdas*, I. L. R., 10 Calc. 1035, referred to. JANKI PRASAD v. MATTANGINI DEBIA

[I. L. R., 7 All., 577

228. ——— *First and second mortgages—Payment by purchaser of mortgaged property of first mortgage—Right of second mortgagee to bring to sale mortgaged property subject to first mortgage.*—In 1874 a plot of land No. 111 which in 1866 had been mortgaged to *L*, was with other property mortgaged to *R*. In 1876 the equity of redemption in plot No. 111 was purchased by *J*, who paid off the mortgage of 1866. *R* brought a suit against *J* to bring to sale the whole of the property included in the mortgage of 1874. The Court of first instance decreed the claim in part exempting from the decree plot No. 111, on the ground that the defendant by reason of having pur-

of first instance by inserting after the words "land No. 111 be exempted from the hypothecation lien" the words "in that property the interest of the plaintiff as second mortgagee only to be sold." *Per* OLDFIELD, J., that the second mortgagee could not bring the land to sale so as to oust the first mortgagee, whose mortgage was usufructuary, and get rid of the first mortgage without satisfying it; but that he had a right to sell such interest as he possessed as second mortgagee. *Per* STRAIGHT, J., that the plaintiff was entitled to bring to sale the property charged to him under his mortgage of 1874, subject to the rights existing in favour of the first mortgagee of 1866. In other words, that a purchaser at a sale in execution of the decree would have no further right than a right to take the property subject to the right of the first mortgagee to possession of the property included in his instrument, and his other rights under that instrument, so long as it enured. RAGHUNATH PRASAD v. JURAWAN RAI

[I. L. R., 8 All., 105

229. ——— *Suit by mortgagee purchasing part of property—Sale by first mortgagee in execution of decree upon second mortgage held by him—Interest acquired by purchaser—Sale of portions of mortgaged property*

the mort... be could not

—*Mortgagee not compelled to proceed first against unsold portions—Enforcement of mortgage against purchaser not having obtained possession.*—At a sale in execution of a decree for enforcement of a hypothecation-bond, the decree-holder, by permission of the executing Court, made bids, but the property was purchased by another. At that time the decree-holder held a prior registered incumbrance which he did not personally announce. In a suit brought by him subsequently to enforce this incumbrance,—*Held* that it could not be said that under the circumstances the plaintiff must be taken to have sold in execution of his decree, the interest which he held under the bond now in suit; that he could not be compelled to proceed first against those portions of the mortgaged property which had not been sold; and that the bond was enforceable against a purchaser of part of the mortgaged property who had never obtained possession. BANWARI DAS v. MUHAMMAD MASHIAT

[I. L. R., 9 All., 690

230. ——— *Sale of equity of redemption—Suit by mortgagee for sale of mortgaged property—Purchaser not a party to suit—Sale of mortgaged property in execution of decree obtained by mortgagee—What passed—Right of purchaser of equity of redemption—Redemption.*—On the 21st December 1871, three of the defendants in this suit mortgaged four groves to *H*. In 1872 the plaintiffs obtained a money-decree against one *D*, and in August 1872, in execution of that decree, sold the said groves, and at the sale purchased them and also two mills which were not in dispute in this suit. The decree against *D* had been found to have the same effect as if it were had and obtained against all the mortgagors. Of this sale *H* had notice, in fact, he opposed it. Subsequently *H*, the mortgagee, sued the mortgagors on their mortgage, and obtained a decree on it, and under the decree brought the said groves to sale in 1877, and purchased them himself. In May 1880 *H* sold the groves to two of the defendants. The plaintiffs, who were not parties to the suit which resulted in the decree under which the groves were sold in 1877, instituted this suit for possession of the groves. *Held* that, notwithstanding the sale of 1872, what was sold under the decree of 1877 was the right, title, and interest of the mortgagors, as they existed at the date of the mortgage of 21st December 1871, with which would go the rights and interest of the mortgagee; and although at a sale under a decree for sale by a mortgagee the right, title, and interest of the mortgagor which is sold is his right, title, and interest at the date of the mortgage, and any right, title, and interest he may have acquired between the date of mortgage and of the sale, still any puisne incumbrancer or purchaser from the mortgagor prior to the date of the mortgagee's decree, and who was not a party to the suit in which the mortgagee obtained his decree, would have the right to redeem the property which the mortgagor would have had but for the decree. This view is consistent with the principles of equity and recognized by the Transfer

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY
—*continued.*

of Property Act. *Muhammad Sami-ud-din v. Man Singh, I. L. R., 9 All., 125,* followed. GAJADHAR *v.* MUL CHAND . . I. L. R., 10 All., 520

231. ———————— *Sale in execution of decree of mortgaged land—Purchase of equity of redemption by decree-holder under s. 294 of the Code of Civil Procedure—Execution of decree in respect of balance—Nature of price paid by purchaser on the purchase of the equity of redemption.*—*A* mortgaged certain land to *B*, but

C died, and *A* sued *C*'s daughter and legal representative, for damages sustained by him from the non-payment of the purchase-money by *C*. *A* obtained a decree, and, the money not being paid as therein decreed, applied for execution and brought to sale the equity of redemption vested in *C* by virtue of the sale By leave of the Court *A* bid at the Court-sale and bought the right of redemption and recovered back possession of the land sold to *C* Subsequently he again applied for execution of the decree in respect of the balance by attachment of certain moveable property, and contended that he was bound to give the defendant credit only for the price which he actually paid at the Court-sale for the equity of redemption. The defendant contended that *A* was bound to give credit for the full value of the land under mortgage *Held* that, having obtained leave of the Court to bid under s. 294 of the Code of Civil Procedure, *A*'s position was that of an independent purchaser, and that the price, which an independent purchaser must be taken to pay when he buys property under mortgage for a cash payment made to the mortgagor on account of his equity of redemption, is the cash payment for the equity of redemption *plus* the debt, *i.e.*, the amount undertaken to be paid to the mortgagee, and that for these amounts *A* was bound to give credit KRISHNASAMI AYYAR *v.* JANAKIAMMAL.

I. L. R., 18 Mad., 153

232. ———————— *Purchase of equity of redemption by subsequent mortgagee—Priority of mortgage—Merger of former mortgage in decree—Right of subsequent mortgagee to keep the prior incumbrance alive—Intention.*—Where there is a subsisting prior incumbrance, and a sub-

233. ———————— *Sale in execu-*

Property Act (Act IV of 1882), s. 73.—*D*, having

ber 1883. In the meantime a 14-anna share of the estate, including the 5¼-anna share, which was separately liable for its own share of Government revenue, was on the 26th September 1883 sold for arrears of the June kist of Government revenue under s. 13, Act XI of 1859, and purchased by one *G*, who sold it again to *P*, who obtained possession on the 6th August 1884 In a suit by *D* against *P* and the judgment-debtor to obtain possession of the 5¼-anna share so purchased by her,—*Held* that the mortgage-debt was not extinguished

until the property vested in her by virtue of

purchase being governed by s. 54 of Act XI of 1859, he acquired the share subject to all encumbrances, including the mortgage lien of *D*, that s 73 of the Transfer of Property Act does not in

had the right, at any time between the 17th August 1883 and the 18th December 1883, to redeem the property upon payment of principal, interest, and costs to *D*, *P*, having acquired the rights of the judgment-debtor by virtue of his purchase on the 26th September 1883, was equally entitled to redeem between that date and the 18th December 1883, but, not having availed himself of that right, the property became absolutely vested in *D* on the 18th December 1883, and that consequently *D* was entitled to the relief claimed. PREM CHAND PAL *v.* PURNIMA DASI . I. L. R., 15 Calc., 546

234. ———————— *Mortgaged land subsequently sold by mortgagee in execution of a money-decree — Purchaser at such sale without notice of mortgage — Mortgagee estopped from subsequently enforcing his mortgage as against purchaser — Fraudulent concealment of lien —*

debtor, he is afterwards estopped from enforcing, as against the purchaser, a previous mortgage of the

This principle applies even though the mortgage-

MORTGAGE—*continued.*

5 SALE OF MORTGAGED PROPERTY —*continued.*

deed has been registered. In 1867 *R* and *G* mortgaged certain lands to *G R* by a registered deed of that date. In 1870 *G R* obtained a money-decree against *R* and *G*, and in execution put up the mortgaged land for sale. The plaintiff purchased it without notice of the mortgage, and in February 1872 obtained possession through the Court. In the meantime, *G R* brought another suit upon his mortgage against his mortgagors He obtained a decree, and in April 1872 ejected the plaintiff and obtained possession. In 1883 the plaintiff filed the present suit against *R*, *G*, and *G R* to recover the lands. *Held* that the plaintiff was entitled to recover. *G R* (the mortgagee), when bringing the land to sale in execution of his decree, was bound by s. 213 of the Civil Procedure Code (VIII of 1859) to disclose the limited interest of his judgment-debtors in it. By concealing his lien he had induced the plaintiff to pay full value for the property, and he could not therefore retain his lien. By his omission he was estopped from disputing the plaintiff's title The rule, that registration of a mortgage amounts to notice to all subsequent purchasers of the same property, does not apply to a case where there has been a fraudulent concealment by a judgment-creditor of the extent of his judgment-debtor's interest in the property brought by the judgment-creditor to sale AGARCHAND GUMANCHAND *v.* RAKHMA HANMANT

[I. L. R., 12 Bom., 678

235. ———— *Subsequent sale by mortgagor of a part of the property mortgaged —Suit on the mortgage—Satisfaction of the decree in such suit partly by a second mortgage—Suit on second mortgage and decree for sale— Title of the purchaser at sale in execution of such decree as against the private prior purchaser of the part —Merger.*—On the 4th October 1864 *N* mortgaged, without possession, a house to *K*. On the 25th June 1868 *N* sold the eastern half of that house to the defendant, who forthwith entered into possession. *K* sued *N* upon the mortgage, and obtained a decree on the 28th November 1868. *N* made certain payments to *K* under the decree until 1875. On the 27th July 1875 *N* passed to *K* an instalment bond for the balance due on the decree, together with R25 on account of savai profits, and as security executed a new mortgage of the house. Satisfaction of the decree was entered up and certified, and the new mortgage-bond registered In 1882 *K* sued *N* upon this mortgage-bond and obtained a decree directing the debt to be realized by the sale of the mortgaged house, and on the 20th July 1883 the plaintiff purchased the house at the execution-sale. In 1885 the plaintiff sued to recover the eastern half of the house which was in the possession of the defendant. The lower Courts rejected the plaintiff's claim. On appeal by the plaintiff to the High Court,—*Held*, confirming the decree of the lower Courts, that the plaintiff, by his purchase in July 1883, did not acquire a title paramount to that of the defendant. All rights under the mortgage of 1864 had merged in the decree obtained in November 1868, but satisfaction of that decree had been entered up and certified when the second mortgage of 1882 was passed. The mere circumstance that the debt secured by the second mortgage was the balance of the old debt was not sufficient to justify the inference that it was intended to keep the decree alive. There were therefore no rights under the old mortgage which the plaintiff could assert as against the defendant in possession. RAMKRISHNA SADASHIV *v.* CHOTHMAL . . I. L. R., 13 Bom, 348

236. ———— *Purchase by a mortgagor at a judicial sale of interest under a second mortgage—Rights against the mortgagor of purchaser at a sale in execution of a consent decree upon the first mortgage.*—The same property, with other, was mortgaged, first to one mortgagee and secondly to another. Decrees were obtained upon

mortgage was effected, the sale under the decree upon the second took place, the possession remaining with the purchaser at the first sale, who was acting benami for the mortgagor At the subsequent sale under the decree upon the first mortgage, the plaintiff purchased, and now sued for possession The High Court decided that the plaintiff was entitled to the first mortgage lien, in consequence of his purchase at the second sale; and, all persons interested in the matter being before the Court, that the proper course was to direct an inquiry as to how much of the mortgage-debt was chargeable upon that portion of the property which formed the subject of the appeal, and to direct that so much of the mortgage-debt should be realized by the sale of that property. *Held* that this judgment incorrectly treated the plaintiff as mortgagee, refusing him a charge for the full amount of his purchase-money. The case depending upon its own circumstances, it would be contrary to equity to allow the mortgagor to set up any right to possession as required by his purchase; and that the plaintiff as against him was entitled to a decree for possession as purchaser. LUTF ALI KHAN *v.* FUTTEH BAHADUR . . . I. L. R., 17 Calc., 23

[L. R., 16 I. A., 129

237. ———— *Purchaser of mortgagor's interest—Redemption—Successive mortgages on family property—Assignment of equity*

and placed the mortgagees respectively in possession. Neither mortgage was binding on the younger brother, who mortgaged his share of the same land to the plaintiff. The plaintiff obtained a decree on his

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

mortgage and attached and brought to sale in execution and himself purchased the half share of his mortgagor, and having afterwards purchased the share of the elder brother and come to a settlement with *P*, now brought a suit for a moiety of the land in the possession of the contending defendants as forming part of the half share of his mortgagor. *Held* that the plaintiff, being the assignee of the elder brother, could not deprive his mortgagees of a portion of their security without asking for an account and offering to pay whatever might be due on the footing of the mortgage. SUBBARAZU *v.* VENKATARATNAM I. L. R., 15 Mad., 234

238. —— —— *Interest acquired by purchaser—Previous sale in execution of a money-decree—Suit to recover possession by mortgagee purchaser—Right of previous purchaser to redeem.*—A purchaser at a sale in execution of a decree on a mortgage acquires the estate of the mortgagor as it existed when he executed the mortgage. *K* and others mortgaged a certain property to *D A* and *V*. Subsequently to the mortgage, the property was sold in execution of a money-decree, and was purchased by *D R* and others, who were put in possession. Afterwards *D A* and *V* upon their mortgage obtained a decree to which *D R* and others, the purchasers under the money-decree, were not made parties. In execution of the mortgage-decree, the property was purchased by *D A*, to whom symbolical possession was given. In a suit brought by *D A* against *D R* and others to recover actual possession,— ... to have an ... from *D A* ... been made ... hat was ... these ... llowed ... AGHUNATH I. L. R., 10 Bom., 486

239. —— —— *Right of Redemption and terms on which redemption is allowed*— ...

mortgage joining *A* and *C*, but not *C*'s transferees as defendants. *C* did not appear, and a decree was passed by consent for R1,050, and land Z was brought to sale and purchased for R270 by the plaintiff, who now sued the defendants separately for possession. *Held* that the defendants, not having been joined in the previous suit, were entitled to redeem on payment of R1,050 and interest. SIVATHI ODAYAN *v.* RAMASUBBAYYAR [I. L. R., 21 Mad., 64

240. —— —— *Mortgage of joint property—Subsequent mortgage of unascertained shares—Partition—Rights of purchasers in execution of decrees of the two mortgages—Form of decree.*—Joint property belonging to an undivided Hindu family constituted of five branches was mortgaged to *A* in 1876, and the share of one branch was mortgaged to *B* in 1880. A partition took place in 1881 when the mortgagors of *B* had their share ...

share to sale and purchased it and obtained possession in August 1889. *A*, in taking possession of the property purchased by him, was obstructed by *B*, but an order was made in his favour. *B* now sued for the cancellation of this order and for an injunction restraining *A* for taking possession of the property from him. The lower Courts decreed that the plaintiff might redeem the land on payment of one-fifth of the amount of the defendant's decree. The defendant appealed against this decree, the ...

defendant to enforce his rights as prior mortgagee. *Venkatanarasammah* v. *Ramiah, I. L. R., 2 Mad., 108*, *Nanack Chand* v. *Teluckdye, I. L. R., 5 Calc., 265*, and *Dirgopal Lal* v. *Bolakee, I. L. R., 5 Calc., 269*, referred to. RAMANADHAN CHETTI *v.* ALKONDA PILLAI I. L. R., 18 Mad., 500

241. —— —— *Sale in execution of decree on prior unregistered mortgage—Right of purchaser—Claim of subsequent mortgagee in possession under registered mortgage—Rights of* ...

defendant was in possession as mortgagee under a subsequent registered mortgage of 1867. He was not a party to the suit and decree of 1827. The plaintiff sued for possession. The defendant claimed that the plaintiff could not recover possession without paying off his (the defendant's) claim. *Held* that ...

plaintiff as purchaser stood in the place of the prior mortgagee and had a right to possession; that the defendant as subsequent mortgagee could not compel the plaintiff to pay off his (the defendant's) mortgage, but that the defendant, not having been a party to the suit on the prior mortgage, had a right, if he wished to retain possession, to pay off the plaintiff's claim. *Mohan Manor* v. *Togu Uka, I. L. R., 10*

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

Bom., 224, referred to and followed. DESAI LALLUBHAI JETHABHAI *v.* MUNDAS KUBERDAS [I. L. R., 20 Bom., 390

242. ——— *Purchase by first mortgagee—Right of, as against a subsequent one.*—A prior mortgagee, having purchased, may still use his mortgage as a shield against the claims of subsequent mortgagees RAMU NAIKAN *v.* SUBBARAYA MUDALI . . . 7 Mad., 229

243. ——— *Sale subject to mortgage—Prior mortgage redeemed—Liability of purchaser.*—*S* mortgaged his land to *B* in 1875, then to *M* in 1879, and then sold it to *K* in order to pay off the mortgage to *B* The purchase-money was paid to *B*, but *K* took no steps to keep *B*'s mortgage outstanding. *Held* that *K* could not use *B*'s mortgage as a shield against *M*. KRISHNA REDDI *v.* MUTTU NARAYANA REDDI [I. L. R., 7 Mad., 127

244. ——— *Bond fide pur-*

for possession. Meantime *B* brought a suit upon his mortgage, and obtained a decree under which he sold the property to *D* *B* then sued *D* for possession. *Held* that the Judge was right in finding that the defendant, being a *bonâ fide* purchaser for value without notice, was entitled to hold the property as against the plaintiff. MAHOMED ASHRUF *v.* KUREEMOODDEEN . . . . 24 W. R., 468

245. ——— *Purchase of equity of redemption by first mortgagee—Priority—Notice—Merger.*—On the 20th of August 1870 *M*, the owner of a house in Gujarat, mortgaged it to the defendant's father with possession On the 2nd of December 1871 he made a san-mortgage of the same house to the plaintiff On the 20th of April 1872 *M* sold the equity of redemption to the defendant's father, who became the purchaser without cancelling his first mortgage. The plaintiff subsequently sued *M* to enforce his san-mortgage, and, obtaining a decree, placed an attachment on the house, which attachment, however, was removed on the application of the defendant's father. The plaintiff now sued to establish his right to levy the amount due on his san-mortgage. He claimed priority to the defendant on the authority of *Toulmin* v.

redemption having been to retain the benefit of all his rights, his son, the defendant, might properly require the redemption of his first mortgage as the condition of the plaintiff's enforcing the decree upon his mortgage against the property. A mortgagee purchasing the equity of redemption may indicate his intention to keep his charge upon the property alive otherwise than by express words. *Per* WEST, J.—

takes a deduction from the original aggregate, and the nominal ownership may itself then be reduced to a small fraction of what it once was Still, be it small or great, it is a possible object of sale or purchase, and there is no ground or reason for saying that an incumbrancer who is already owner of one fraction of the property may not buy this other fraction without forfeiting the former fraction in favour of other fractional owners in the remainder left after deduction of his prior share. MULCHAND KUBER *v.* LALLU TRIKAM . I. L. R., 6 Bom., 404

246. ——— *Revival of lien—Priority of lien among mortgagees.*—Where an estate had been mortgaged in 1863, and a second mortgage to the same person in 1867 had resulted in a re-adjustment of the old debt, under which the old mortgage had determined, but the original relations between mortgagor and mortgagee had been renewed; and where a fresh lien had been created on the same

the second mortgagee, having enjoyed possession of the estate under the zur-i-peshgi lease, was not entitled to interest on the amount decreed WOSEEUN *v.* BYJNATH SINGH . . 25 W. R., 171

247. ——— Possession under mortgage—*Priority of mortgagee with possession.*—As a general rule, by Hindu law, a mortgagee in possession is entitled to have his claim satisfied in preference to the claim of the holder of a mortgage of prior date unaccompanied by possession. HARI RAMCHANDRA *v.* MAHADAJI VISHNU [8 Bom., A. C., 50

KRISHNAPPA VALAD MAHADAPPA *v.* BAHIRU YADHAVRAV . . . 8 Bom., A. C., 55

There are cases, however, which the Courts treat as exceptions to that general rule. Thus, where a prior mortgagee sued to recover possession of certain mortgaged premises from the mortgagor, and before

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

made over to him (the subsequent mortgagee), it was held that possession so obtained pending the

248. ——— ——— *Registration of mortgage-deed.*—A mortgage-deed is, when registered, valid without possession BALAJI NARAYAN KOLATKAR *v.* RAMCHANDRA GANESH KELKAR [11 Bom., 37

249. ——— *Law in Guzerat —Rights of prior and puisne mortgagees—Purchaser of equity of redemption with notice of incumbrances.*—The rule of Hindu law that a mortgage

himself the mortgagor he cannot set up against such subsequent incumbrances either a prior mortgage of his own or a mortgage which he or the mortgagor may have got in. ITCHARAM DAYARAM *v.* RAIJI JAGA . . . . . 11 Bom., 41

250. ——— ——— *Subsequent purchase.*—The mortgagee without possession of certain lands in the Dekkan (under a mortgage-deed of the

The deed of sale was duly registered. The plaintiff

See CHINTAMAN BHASKAR *v.* SHIVRAM HARI [9 Bom., 304

251. ——— *Purchase by mortgagee—Priority.*—*Held* that a mortgagee in possession, who also became purchaser of the property

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

252. ——— *Possession of title-deeds—Priority—Rights of second mortgagees.*—The mere possession of the title-deeds by a second mortgagee, though a purchaser for value without notice, will not give him priority There must be some act or default of the first mortgagee to have this effect SOMASUNDARA TAMBIRAN *v.* SAKKARAI PATTAN . 4 Mad., 369

253 ——— *Decree for possession—Sale in execution of money-decree—*

gagor for a money-claim unconnected with the mortgage, and on the 20th February 1874 obtained a decree for R100 In execution of this money-decree, the mortgaged property was attached and sold by the Court at the plaintiff's instance, the defendant be-

appear in evidence) for possession of the mortgaged property against the mortgagor. In endeavouring to enforce that decree, plaintiff was obstructed by defendant on the 15th January 1875. *Held* that, if it was passed subsequent to the Court's sale of the

Held further that, as defendant had no notice of the plaintiff's mortgage when plaintiff caused the Court's sale to be made under his money-decree, or that the sale was made subject to the plaintiff's mortgage, it was incumbent on plaintiff, as such

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

41, distinguished. TUKARAM BIN ATMARAM *v.* RAMACHANDRA BUDHARAM I. L. R., 1 Bom., 314

254. ———— *Mortgage without title—Priority of mortgagee's right.*—*P* and his partners mortgaged certain immoveable property to plaintiff on the 11th October 1869. They had then no title to the property, but they subsequently ac

property in satisfaction of his debt. The award was presented in Court by plaintiff on the 23rd January 1874, and was filed by the Court on the 23rd February 1874. Meanwhile on the 14th February 1874 the property was attached in execution of a money-decree obtained by a creditor of *P* and his partners against them. On the 15th April 1874 it was sold by auction and purchased by defendant In a suit brought by plaintiff to recover possession of the property, both the lower Courts rejected his claim, on the ground that *P* and his partners had no right to the property when they mortgaged it to plaintiff. *Held* by the High Court on second appeal, reversing the decrees of the lower Court, that the defendant, as purchaser under a money-decree, could not defeat the plaintiff's right as mortgagee to sell the property in satisfaction of his debt. PRANJIVAN GOVARDHONDAS *v.* BAJU . I. L. R., 4 Bom., 34

255 ———— *Mortgage of property already sold in execution—Subsequent mortgagee with notice of previous sale—Assignment—Rejection of application under s 269 of Act VIII of 1859—Suit within one year*—On the 17th October 1866, *K* (defendant No 1), one of the three sons of *B*, mortgaged certain immoveable property to one *N* with possession On the 19th December 1866, *A* (plaintiff No. 1) obtained a money decree against *K* and the estate of his deceased father. In execution of that decree, the property was sold by the Court and purchased by *A* himself, who obtained a certificate of sale, dated the 30th January 1868. He subsequently sold and conveyed the property to *D* and *C*

them from *M* (defendant No. 2) on the mortgage of the property. *N* returned his mortgage-deed to *K* and his brothers, who made it over to *M*. In 1875 the plaintiffs brought a suit against *K* and *M* for possession of the property. The Subordinate Judge held the plaintiffs entitled to recover it. on payment of the amount due to *M* on his mortgage, being of opinion that *M* was in the same position as *N*. On appeal, the District Judge dismissed the plaintiffs' suit on the ground that it was not brought within one year from the date when the application for possession was rejected. On appeal to the High Court,—

Court-sale. *Held* also that the order of the 11th July 1868, rejecting the plaintiff's application for possession under s. 269 of the Civil Procedure Code (Act VIII of 1859), did not affect the right to bring a redemption suit against *N*. *Held* further that there was nothing to show any assignment, by *N*, of his mortgage, or any intention on his part to assign it to *M*, or to keep it on foot for *M*'s benefit The High Court accordingly reversed the decree of the Court below, and made a decree in favour of the plaintiffs. APAJI BHIVRAV *v.* KAVJI I. L. R., 6 Bom., 64

256. ———— *Right to redeem—Parties—Registration Act, XX of 1866, s 50*—

the land under his certificate of sale. On the 21st September 1871, *P* assigned his mortgage to the plaintiff. The deed of assignment was not registered; neither *P* nor his assignee, the plaintiff, ever had possession under the mortgage of 1870. The plaintiff brought this suit to obtain possession of the land Both the

See NARAN PURSHOTAM *v.* DALATRAM VIRCHAND [I. L. R., 6 Bom., 538

257. ———— *Registration—Notice—Sale of mortgaged property in execution of a money-decree without express notice of mortgage—Right of mortgagee to enforce mortgage against the property in hands of purchaser—Civil Procedure Code, 1882, s. 287.*—A mortgagee under a registered mortgage-deed obtained a money-decree against the mortgagors in some matter other than the mortgage, and sold the mortgaged property in execution of the decree. The mortgage lien was not announced in the proclamation of sale as required by s. 287 of the Civil Procedure Code (Act XIV of 1882), and the auction-

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

258 ———— *Mortgage, purchase of the equity of redemption—Suit for confirmation of possession and declaration of title, whether maintainable by such purchaser—Parties—Purchaser from a mortgagor, whether bound by a decree passed in his absence*—Defendant No 4, after having mortgaged a certain property to defen-

tiffs for confirmation of possession and declaration of title,—*Held* that, inasmuch as the plaintiffs were not made parties to the mortgage suit, the mortgage-decree was not binding upon them, but at the same time the plaintiffs did not acquire by the purchase any other right than to redeem the mortgage, and that the plaintiffs were not entitled to the decree prayed for by them PROTAP CHANDRA MANDAL *v* ISHAN CHANDRA CHOWDHRY 4 C. W. N., 266

259 ———— *Suit for recovery of possession by the purchaser of the equity of redemption who is not a party to the mortgage suit, whether maintainable*—Where the plaintiff purchased a mortgaged property from the mortgagor,

the plaintiff was not bound by the mortgage-decree, and he was entitled to recover possession of the mortgaged property. GRISH CHUNDER MONDUL *v* ISWAR CHUNDER RAI 4 C. W. N., 452

260. ———— *Purchase of mortgaged property—Parties—Right of purchase to possession—Right of redemption.*—Plaintiffs are the representatives of one *H* in whose favour defendants 1 to 4 and one *K*, ancestor of defendants 8 to 10,

bond, 1878, was sued on and the decree obtained on the

31st October 1881. The decree on the plaintiffs' bond was obtained on the 31st July 1883; the decree on

their subsequent purchase could not affect the defendants, but the fact of their omitting to make them

were sued as subsequent, instead of prior, mortgagees, and that they were called on to redeem which they were not bound to do. DHAPI *v.* RASHAM DEO PARSHAD [4 C. W. N., 297

261. ———— **Purchaser of property mortgaged from grantee of mortgagor**—*Decree and sale by mortgagee—Auction-purchaser—Priority of latter over purchaser from grantee of mortgagor.*—In the year 1860 *A* mortgaged her share in a zamindari to *B*. In 1870 she granted a patni lease of the property to *C*, who transferred it to *D* Subsequently, *A* made a gift of the property to *E*, and in 1872 *E* sold the land so given to *F*, who thus became the owner of the patni and zamindari rights of the property formerly belonging to *A*. In 1873 *B* brought a suit against *E* (to which *F* was not a party) on his mortgage-bond, and obtained a decree for the sale of the mortgaged property At the sale the property was purchased by *G* (the son of *D*). *F* then brought a suit for rent against *G* and obtained a decree *G* then brought this suit against *F* to have it declared that he was no longer liable to pay rent, and to establish his zamindari rights, claiming a refund of the money paid under the rent-decree. *Held* that *G* had bought the entire interest which *A* and *B* could jointly sell, and not merely the right and interests of *A* as they stood at the time of the sale, and that he was therefore entitled to a decree declaring that he was no longer liable to pay rent to *F*. MUTHORA NATH PAL *v.* CHUNDERMONEY DABIA . . . . I. L. R., 4 Calc., 817

262. ———— **Purchaser, Assignee of**—*Ejectment by assignee of purchaser at sale in execution of decree against puisne mortgagee—Rights*

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

of parties.—Where immoveable property mortgaged has been sold by a Court in execution of a decree obtained by the mortgagee to enforce his lien against the mortgagor, a puisne mortgagee who has not been made a party to the suit is not bound by the decree or sale, and is entitled to redeem the first mortgage. The assignee of the purchaser of land sold in execution of a mortgage-decree obtained by a mortgagee in a suit against the mortgagor alone is not entitled

263. ——— Suit by purchaser for possession—*Priority—Equity of redemption—Registration—Notice—Parties to suit brought by a first mortgagee—Practice—Amendment of plaint.*—*A*,

January 1868, *A* mortgaged the same land to the defendant *R* for R250 The mortgage deed was registered in May 1868, and recited that the mortgagee (defendant) was put in possession The lower Courts found as a fact that the defendant had obtained ... sued *A* on ... against him, ... satisfaction ... mortgaged ... party to that ... was sold in execution of that decree, and purchased by the plaintiff for R99-12, with notice of the defendant's mortgage. On the 28th April 1870 the defendant *R* instituted a suit in ejectment against *N* (the mother of *A*), who was in occupation of the land as tenant and had failed to pay the rent On the 7th July 1870 the plaintiff, as purchaser at the above-mentioned sale, was put into possession, but on the 24th August 1870 the defendant obtained a decree in ejectment against *N* (the mother of *A*) as her tenant. In execution of that decree, the defendant recovered possession of the land, dispossessing the plaintiff, though he had not been a party to the ejectment suit. The plaintiff thereupon brought the present

defendant, inasmuch as her mortgage was prior in date *to the defendant's mortgage, and was registered. S*

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

had a right to maintain a suit *for the sale of land to* satisfy her mortgage, but she ought to have made the defendant (as subsequent mortgagee) a party to it, inasmuch as the equity of redemption was vested in the defendant to the extent of her (defendant's) mortgage, and she (defendant) would have been entitled to redeem the land by payment of the amount which might have been found due to *S* in her suit. The defendant being in possession of the land at the time of the institution of the suit of *S*, and her (defendant's) mortgage being registered, *S* must be *regarded as having had notice of the defendant's* claim, and was bound to make defendant a party

doubt, the decree in the suit of *S* bound the mortgagor *A*, who was a party to it, so far as his right to redeem was concerned The plaintiff therefore had a good title to the interest of *A*, and was entitled to redeem the land from the defendant's mortgage.

of the land from the defendant's mortgage, and to treat his suit, which was in the nature of an *ejectment suit, as one for redemption.* The High Court accordingly reversed the decree of the Joint Judge, and made a decree for an account on the defendant's mortgage, allowing the plaintiff to redeem within a certain time on payment of the balance that might be found due to the defendant, or, in default ordering the plaintiff to be for ever foreclosed from recovering the land *Itcharam Dayaram v. Raiji Jaga, 11 Bom., 41,* and *Shringarpure v. Pethe, I. L. R., 2 Bom., 633,* referred to and followed. RADHABAI *v.* SHAMRAV VINAYAK

[I. L. R., 8 Bom., 168

264. ——— *Execution—Sale of equity of redemption—Purchaser at execution-sale—Sale in execution of decree on mortgage prior in date—Priority—Possession—Notice—Certificate of sale.*—On the 18th January 1877 the father of the plaintiffs purchased the interest of *M* in two houses at a sale in execution of a money-decree

M on mortgages executed prior to that date and decrees in both were obtained against *M*. In execution of these decrees, both the houses were sold and the respective purchasers were represented by two of the defendants. The purchasers got possession and both obtained sale-certificates, one prior to the sale to

MORTGAGE—*continued.*

5 SALE OF MORTGAGED PROPERTY
—*continued*

the father of the plaintiffs, *viz.*, on 5th February 1878, and the other subsequently, *viz.*, 1st November 1878 The plaintiffs now sued to recover the houses *Held* that the plaintiffs were not entitled to recover as against the defendants The plaintiffs, not having either got possession or obtained a certificate of sale at the date of the sale in execution of the decrees on the mortgages, had only an inchoate title The purchasers in execution had no notice of the plaintiff's incipient right, and having been left to buy what, so far as they knew, was a complete title, they ought not to be disturbed at the instance of the plaintiffs who failed to assert their dormant right Had the plaintiffs got into possession or obtained a certificate and registered, there would have been notice sufficient to put all persons interested on inquiry as to their rights; but while they chose to keep their rights wholly in the dark, they invited others to act as if those rights were not in existence, and they could not look to the Courts to extend and complete such rights in a way which would render the defendants victims, not of their own negligence, but of the negligence of those who would gain by it NANJUNDEPA *v.* HEMAPA . I. L. R., 9 Bom., 16

265. ———————— *San-mortgage—Mortgage with possession—Sale in execution of decree obtained by first mortgagee—Purchase by first mortgagee at such sale—Suit by purchaser against second mortgagee for possession—Rights of second mortgagee—Redemption.*—In 1866 *R* executed a san-mortgage of certain land to the plaintiff,

decree. In attempting to take possession he was

which passed by that sale. As the defendant had not been a party to the plaintiff's suit against *R*, he was entitled to redeem the property if he wished MOHAN MANOR *v.* TOGU UKA

[I. L. R., 10 Bom., 224

266. ———————— *Suit by mortgagee for possession of mortgaged property—Pre-emption—Purchaser for value without notice.*—Under a registered deed of mortgage, dated in May 1869, the mortgagee had a right to immediate possession, but by arrangement between the parties the mortgagors remained in possession, the right of the mortgagee to obtain possession as against them

MORTGAGE—*continued*

5 SALE OF MORTGAGED PROPERTY
—*concluded*

being, however, kept alive. In October 1869 the

6. MARSHALLING

267. ———— **Mode of satisfaction of mortgage lien**—*Sale by third party in execution.*

not release that estate from the mortgage, but that it forced the plaintiff to take measures in the first place to recover the amount due to him from the re-

NOWA KOOWAR *v.* ABDOOL RUHEEM

[W. R., 1864, 374

268. ———————— *Charge on several properties.*—In a suit to establish a claim against three properties mortgaged to the plaintiff, but situate in different districts, where one of the

before touching the third, but having given no evidence to show that he was a *bonâ fide* subsequent mort-

269. ———————— *Charge on several properties*—*Per* SETON-KARR, J.—Case remanded for the lower Court to find whether, when property hypothecated for a bond has passed to a *bonâ fide* purchaser, the same can be declared liable to satisfy such part of a money-decree on the bond as cannot

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

of parties.—Where immoveable property mortgaged has been sold by a Court in execution of a decree obtained by the mortgagee to enforce his lien against the mortgagor, a puisne mortgagee who has not been made a party to the suit is not bound by the decree or sale, and is entitled to redeem the first mortgage. The *assignee of the purchaser of land sold in execution* of a mortgage-decree obtained by a mortgagee in a suit against the mortgagor alone is not entitled

he is entitled on payment of the sum decreed, to retain possession as mortgagee both in respect of his original debt and of the sum required to be paid by him for its protection. The ruling in *Mathora Nath Pal* v. *Chundermoney Dabia, I. L. R., 4 Calc., 817;* and dictum of WEST, J., in *Shringarpure* v. *Pethe, I. L. R., 2 Bom., 663,* dissented from. VENKATA v. KANNAM . . . . I. L. R., 5 Mad., 184

263. —— Suit by purchaser for possession—*Priority—Equity of redemption—Registration—Notice—Parties to suit brought by a first mortgagee—Practice—Amendment of plaint.*—*A*, the owner of certain land, mortgaged it to *S* for ten years for R1,500 by a deed dated the 27th November 1867. The deed was registered, but *S* was not put into possession of the mortgaged land. On the 17th January 1868, *A* mortgaged the same land to the defendant *E* for R250. The mortgage deed was registered in May 1868, and recited that the mortgagee (defendant) was put in possession. The lower Courts found as a fact that the defendant had obtained possession of the mortgaged property. *S* sued *A* on her mortgage, and obtained a decree against him, dated the 8th December 1869, directing satisfaction of the mortgage-debt by the sale of the mortgaged property. The defendant was not a party to that suit. On the 10th March 1870 the land was sold in execution of that decree, and purchased by the plaintiff for R99-12, with notice of the defendant's mortgage. On the 25th April 1870 the defendant *E* instituted a suit in ejectment against *N* (the mother of *A*), who was in occupation of the land as tenant and had failed to pay the rent. On the 7th July 1870 the plaintiff, as purchaser at the above-mentioned sale, was put into possession, but on the 24th August 1870 the defendant obtained a decree in ejectment against *N* (the mother of *A*) as her tenant. In execution of that decree, the defendant recovered possession of the land, dispossessing the plaintiff, though he had not been a party to the ejectment suit. The plaintiff thereupon brought the present suit to recover the land under s. 230 of Act VIII of 1859. His claim was rejected by the Subordinate Judge, but allowed by the Joint Judge in appeal. On special appeal to the High Court,—*Held* that the claim of *S* against the land was prior to that of the defendant, inasmuch as her mortgage was prior in date to the defendant's mortgage, and was registered. *S* had a right to maintain a suit for the sale of land to satisfy her mortgage, but she ought to have made the defendant (as subsequent mortgagee) a party to it, inasmuch as the equity of redemption was vested in the defendant to the extent of her (defendant's) mortgage, and she (defendant) would have been *entitled to redeem the land by payment of the* amount which might have been found due to *S* in her suit. The defendant being in possession of the land at the time of the institution of the suit of *S*, and her (defendant's) mortgage being registered, *S* must be regarded as having had notice of the defendant's claim, and was bound to make defendant a party

suit of *S*, and therefore not bound by the decree in it. The plaintiff accordingly was fully aware of the infirmity of the title which he was acquiring. No doubt, the decree in the suit of *S* bound the mortgagor *A*, who was a party to it, so far as his right to redeem was concerned. The plaintiff therefore had a good title to the interest of *A*, and was entitled to redeem the land from the defendant's mortgage. The utmost relief which the Court could afford to the plaintiff under the above circumstances was to permit him to amend his plaint by praying a redemption of the land from the defendant's mortgage, and to treat his suit, which was in the *nature of an ejectment* suit, as one for redemption. The High Court

be found due to the defendant, or, in default ordering the plaintiff to be for ever foreclosed from recovering the land. *Itcharam Dayaram* v. *Raiji Jaga, 11 Bom., 41,* and *Shringarpure* v. *Pethe, I. L. R., 2 Bom., 631,* referred to and followed. RADHABAI v. SHAMRAV VINAYAK

[I. L. R., 8 Bom., 168

264. ———— *Execution—Sale of equity of redemption—Purchaser at execution-sale—Sale in execution of decree on mortgage prior in date—Priority—Possession—Notice—Certificate of sale.*—On the 18th January 1877 the father of the plaintiffs purchased the interest of *M* in two houses at a sale in execution of a money-decree

M on mortgages executed prior to that date and decrees in both were obtained against *M*. In execution of these decrees, both the houses were sold and the respective purchasers were represented by two of the defendants. The purchasers got possession and both obtained sale-certificates, one prior to the sale to

MORTGAGE—*continued.*

5 SALE OF MORTGAGED PROPERTY
—*continued.*

the father of the plaintiffs, *viz*, on 5th February

the mortgages, had only an inchoate title The purchasers in execution had no notice of the plaintiff's incipient right, and having been left to buy what, so far as they knew, was a complete title, they ought not to be disturbed at the instance of the plaintiffs who failed to assert their dormant right. Had the plaintiffs got into possession or obtained a certificate and registered, there would have been notice sufficient to put all persons interested on inquiry as to their rights, but while they chose to keep their rights wholly in the dark, they invited others to act as if those rights were not in existence, and they could not look to the Courts to extend and complete such rights in a way which would render the defendants victims, not of their own negligence, but of the negligence of those who would gain by it NANJUNDEPA *v.* HEMAPA I. L R., 9 Bom., 16

265. ———— *San-mortgage —Mortgage with possession—Sale in execution of decree obtained by first mortgagee—Purchase by first mortgagee at such sale—Suit by purchaser against second mortgagee for possession—Rights of second mortgagee—Redemption* —In 1866 *R* exe-

obtained a decree and he himself purchased the property at the Court-sale held in execution of that decree In attempting to take possession he was

266. ———— *Suit by mortgagee for possession of mortgaged property—Pre-emption—Purchaser for value without notice.*—

mortgagee to obtain ...

MORTGAGE—*continued*

5 SALE OF MORTGAGED PROPERTY
—*concluded.*

being, however, kept alive In October 1869 the

that there was no equitable ground why the plaintiff's right under the mortgage, which had priority, should be defeated by the defendant's purchase. DURGA PRASAD *v.* SHAMBHU NATH . I. L. R., 8 All, 86

6. MARSHALLING.

267. ———— Mode of satisfaction of mortgage lien—*Sale by third party in execution.*

[W. R., 1864, 374

268. ———— *Charge on several properties* —In a suit to establish a claim against three properties mortgaged to the plaintiff, but situate in different districts, where one of the defendants (the appellant) was interested in one only of the properties, the appellant having asked that plaintiff might be compelled to resort first to the

of marshalling of securities be introduced into this country? KHETOOSEE CHEROJEIA *v.* BANEY MADHUB DOSS . 12 W. R., 114

269. ———— *Charge on several ...*

MORTGAGE—*continued.*

6. MARSHALLING—*continued.*

be satisfied from any other source. *Per* NORMAN, *J.* —If *A* has a mortgage on two different estates for the same debt, and *B* has a mortgage on one only of the estates for another debt due from the same party, *B* has a right in equity to throw *A* in the first instance for satisfaction upon the security which he, *B*, cannot touch, where it will not prejudice *A's* right or improperly control his remedies. A purchaser of one of the estates has the same equity as a mortgagee. BISHONATH MOOKERJEE *v.* KISTO MOHUN MOOKERJEE . . . 7 W. R., 483

270. ———— *Priority—Marshalling of securities—Purchaser for value.*—Where the owner of certain property mortgages it to *A*, and afterwards sells a portion of the mortgaged property to *B*, it is not incumbent on *A* in suing to enforce his mortgage to proceed first against that portion of the property which has not been sold by the mortgagor. LALA DILAWAR SAHAI *v.* DEWAN BOLAKIRAM I. L. R., 11 Calc., 258

271. ———— *Money-decrees—Doctrine of marshalling—Mortgage-decree—Surplus sale-proceeds*—The doctrine of marshalling does not apply as between a mortgagee and attaching creditors of the mortgagor who hold mere money-decrees. A mortgagee brought a suit against the mortgagor to have a declaration of his lien over the mortgaged properties, and obtained a decree. He afterwards brought another suit against certain attaching creditors of his mortgagor to have a declaration of his lien over certain surplus moneys in the hands of the Collector, who, previously to the institution of the first suit, had sold certain of the mort-

[illegible]

as be[illegible] the prop[illegible] *Moo*[illegible] KUNDOO *v.* RAMKANTO ROY CHOWDHRY

[I. L. R., 6 Calc., 142 : 7 C. L. R., 396

272. ———— Apportionment of debt—

[illegible]

273. ———— *Purchaser of part of mortgaged property without notice—Suit for sale of whole property in satisfaction of mortgage*

[illegible]

MORTGAGE—*continued.*

6. MARSHALLING—*continued.*

the whole of which was subject to a prior incumbrance. *Tulsi Ram* v. *Munnoo Lal, 1 W. R., 353; Nowa Koowar* v. *Abdool Ruheem, W. R., 1864, 374; Bishonath Mookerjee* v. *Kisto Mohun Mookerjee, 7 W. R., 483;* and *Khetoosee Cheroorin* v. *Banee Madhub Doss, 12 W. R., 114,* referred to. The mortgagees of two properties, one of which had, subsequently to the mortgage, been purchased for value *bonâ fide* by one who had no notice of the incumbrance, brought a suit to enforce their lien against both the properties originally owned by the mortgagor, impleading as defendants both the mortgagor and the purchaser. *Held* that, while there was no doubt that, if the purchaser was compelled to pay more than the share of the mortgage-debt apportioned on the property purchased by him, he would be entitled to contribution, yet, in a suit so framed and having regard to the array of parties, such an apportionment could not be made at the stage of second appeal. RODH MAL *v.* RAM HARAKH

[I. L. R., 7 All., 711

274. ———— *Right of creditor to realise out of land* [illegible] lecree, *S* in 1874 lands purchased by *T* and other lands of *S* were declared liable for a mortgage-debt of R1,802-8-0. In 1879 *V*, in execution of this decree, attached and brought to sale and purchased the lands in *T's* possession. *Held* in a suit by *V* to eject *T* that *V* was entitled to recover the lands unless *T* paid the whole of *V's* decree-debt. TIMMAPPA *v.* LAKHSMAMMA

[I. L. R., 5 Mad., 385

275. ———— *Right to proceed against several properties—Suit on mortgage-bond—Purchase of one property by mortgagee at in-*

[illegible]

proceed against the other properties. BYJONATH SAHOY *v.* DOOLHUN BISWANATH KOOER

[24 W. R., 83

276. ———— *Charge on various properties—Mortgagee as purchaser of equity of redemption in part of mortgaged property.*—Property which is the subject of a mortgage when sold in satisfaction must be sold as a whole, and not piecemeal at the pleasure of the mortgagee, especially

MORTGAGE—*continued*

6. MARSHALLING—*continued*.

when he has become owner of the equity of redemption in part. The proper course is to make an enquiry into the relative values of the properties included in the mortgage and to burden each with a proportionate share of the debt It must not be assumed that the Government assessment represents the true value of estates. KISHEN PERTAB SAHEE BAHADOOR v. LALLA NUND COOMAR SINGH PARRAY [25 W. R., 388

277. ———————— *Charges on mortgages of different shares of same property—Priority—Form of decree.*—In certain lands *A* held an 8-annas share and *B* and *C* each a 4-annas share. *A* having mortgaged his share to *G*, the respondent took a mortgage of the whole estate, and afterwards the appellant took a mortgage of *B's* share and half of *A's* share Subsequently, the respondent purchased the equity of redemption of the entire estate, the amount of the purchase-money being more than sufficient to pay off the first and second mortgages. *Held* that the appellant was entitled to have an apportionment of the amounts covered by the different mortgages made and to have an 8-annas share in the land put up for sale, unless the respondent was willing to pay off his mortgage-debt. Rule of apportionment and form of decree set out. GUNGA NARAIN SEN v. HURRIS CHUNDER CHANDDARS . . . . . . 6 C. L. R., 336

278. ———————— *Apportionment prejudicing third parties—Transfer of Property Act (IV of 1882), s. 81*—The principle of marshalling cannot be exercised to the prejudice of third parties. *Barnes* v. *Racster, 1 Y. & C. C. C., 401*, and *Bugden* v. *Bignold, 2 Y. & C. C. C., 377*, followed. S. 81 of the Transfer of Property Act is applicable only where the second mortgagee has no notice of the prior mortgage. The principle of apportionment laid down in *Gunga Narain Sen* v. *Hurrish Chunder Changdars, 6 C. L. R., 336*, referred to. SATISH CHUNDER MUKERJI v. GOPAL CHUNDER CHUCKERBUTTY . 2 C. W. N., 397

279. ———————— *Charges on several properties*—It appearing that the mortgagee deliberately abstained from executing his decree against eleven properties which still remained in the possession of the mortgagor, but proceeded against the one property which had passed out of the mortgagor's possession, the mortgage-debt was directed to be apportioned between the 12 properties, and the mortgagee was not to be allowed to take out execution against the property which had passed out of the [illegible]

the other eleven properties RAM DHUN DHUR v. MOHESH CHUNDER CHOWDHRY

[I. L. R., 9 Calc., 406: 11 C. L. R., 565

280. ———————— *Charges on separate mortgaged properties.*—One of two mouzahs [of] a mortgage of which *A* had obtained a decree with an order for sale of the mortgaged properties was attached in execution of another decree and sold subject to the first decree. *A* became the purchaser, [illegible]

Singh, 13 Moore's I. A., 404, cited. GOSSYEN LUCHMEE NARAIN POORI v. LICRAM SINGH

[4 C. L. R., 294

YAKOOB ALI CHOWDHRY v. RAM DOOLAL

[13 C. L. R., 272

281. ———————— By a mortgage-deed, dated the 24th January 1878, *S* and *V*, two of three brothers constituting an undivided family, jointly mortgaged to the plaintiff *B* a part of the family property. On the 28th July 1878, *S* alone further mortgaged to the plaintiff for a fresh advance [illegible]

on the second of the above mortgages, *viz*, that of the 28th July 1878 He obtained a decree, and at the sale held in execution of that decree himself purchased the property comprised in that mortgage. In the meantime, on the 27th January 1882 and on the 6th December 1883, *V* and *N* respectively [illegible]

part of the lands comprised in the mortgage now sued upon in execution of the decree obtained by him upon his second mortgage, could not now seek to burden the remaining lands included in the mortgage with the whole of the mortgage-debt, but that a proportionate part of that debt must be satisfied. *Held* that the plaintiff could not recover the first mortgage-debt from the remaining lands without deducting a proportionate part of that debt. A mortgagee will not be allowed without special reason deliberately to execute his decree exclusively against one of the owners of the equity of redemption for the whole debt. *Ram Dhun Dhur* v. *Mohesh Chunder Chowdhry, I. L. R., 9 Calc., 406*, approved. MORO RAGHUNATH v. BALAJI TRIMBAK

[I. L. R., 13 Bom., 45

282 ———————— *Transfer of Property Act, s. 81—Marshalling—Creditors of co-parcenary and separate creditors.*—Suit by the

MORTGAGE—*continued.*

6. MARSHALLING—*continued.*

cuted it as manager of a joint Hindu family of which defendant No 2 was a member and for the rightful purposes of the family. The family subsequently became divided and the hypothecated property was divided between defendants Nos. 1 and 2. Defendant No 1 afterwards hypothecated part of his share for a private debt to defendant No 3, who having sued on his hypothecation and brought the land to sale in execution became the purchaser The District Munsif passed a decree for the plaintiff against which defendants Nos. 2 and 3 preferred separate appeals. The District Judge on appeal passed a decree directing that the plaintiff should first proceed against all the property which was not subject to the hypothecation to defendant No. 3, including the share of defendant No. 2. Defendant No 2 preferred a second appeal. *Held* that, as the plaintiff and defendant No 3 were not creditors of the same person having demands against the property of that person, no case for marshalling arose, and consequently that the direction of the District Judge was wrong GOPALA v. SAMINATHAYYAN . . I. L. R., 12 Mad., 255

283 ———— *Transfer of Property Act (IV of 1882), s. 78 – Priority of mortgages—Gross negligence—Registration.*—A mortgagee at the request of the mortgagors returned to them their certificate of title to the mortgaged premises to enable them to raise money to pay off his mortgage. This mortgage was duly registered. The mortgagors, who remained in possession of the mort-

executed to him a mortgage of the same premises to secure the sum of R400 and a further sum of R800, *Held* that, though the second mortgagee had been wanting in caution, yet since he had been thrown off his guard by the conduct of the first mortgagee in returning to the mortgagors their certificate of title, the second mortgagee was entitled to priority in respect of his security over the first mortgagee. DAMODARA v. SOMASUNDARA

[I. L. R., 12 Mad., 429

284. ———— *Transfer of Property Act (IV of 1882), s. 78 — Priority of mortgages — Gross negligence — Registration.*—On

MORTGAGE—*continued.*

6. MARSHALLING—*continued.*

been delivered to the plaintiff company on the execution of the mortgage, and defendants Nos. 1 and 3 undertook that they would raise a loan thereon and discharge the debt due to the plaintiff company, or return the title-deeds if they failed in raising the loan. On the 20th April 1888 defendant No. 1 deposited the title-deeds with defendant No. 4, and executed a mortgage to her for R4,000, and on

285. ———— *Transfer of*

and for foreclosure, it appeared that the mortgaged premises had been purchased by the mortgagor from the second defendant and others in 1878, under a

The premises were mortgaged to defendant No. 2, who was an experienced sowcar in 1879, and to the plaintiff company in 1883, and again in 1884, and were conveyed absolutely by the mortgagor to defendant No 2 in 1886 The mortgagor executed a rent agreement to the plaintiff company on the occasion of each of the mortgages of 1883 and 1884. The above mortgages were registered, but the plaintiff company and defendant No. 2 had no notice at the respective dates of their mortgages and conveyance of any previous incumbrance. The plaintiff company

order to account for their not being replaced in his

the mortgagor amounted to gross negligence within the meaning of the Transfer of Property Act, s. 78, and that the registration of the mortgage to defendant No. 2 did not affect the plaintiff company

MORTGAGE—*continued.*

6. MARSHALLING—*continued.*

with constructive notice of its existence, and that accordingly the subsequent mortgages to the plaintiff company were entitled to priority. *Held*, on appeal, COLLINS, *C.J.*, and HANDLEY, *J.*, (1) that the plaintiff company were not affected with constructive notice of the mortgage of the second defendant by reason of its registration or of their failure to search the registry or to inquire after the Collector's certificate ; (2) that the second defendant, not having given a reasonable explanation of his conduct in leaving the title-deeds with the mortgagor four years after his mortgage, lost his priority by reason of his gross neglect under the Transfer of Property Act, s. 78,

[illegible]

Affirming the decision in MADRAS BUILDING COMPANY v ROWLANDSON I. L. R., 13 Mad., 383

286. ——— *Notice of prior mortgage to subsequent mortgagee — Doctrine of*

[illegible]

287. ——— *Transfer of*

[illegible]

288. ——— *Mortgage—Subsequent mortgage to another person of part of the mortgaged property — Notice to puisne incumbrancer—Transfer of Property Act (IV of 1882).*

MORTGAGE—*continued.*

6. MARSHALLING—*concluded*

[illegible]

person for R100. *P* sued on his mortgage and

[illegible]

should be apportioned, and that property C should bear its proportion of the debt. *Held* that the third

[illegible]

property C to the rest of the mortgaged property. *Held* also that the third defendant had a right to have the securities marshalled. That right extends to a purchaser, and is not confined to a puisne incumbrancer. *Rodh Mal v. Ram Harakh, I. L. R, 7*

[illegible]

to the passing of the Transfer of Property Act. *Chunilal Vithaldas v Fulchand, I. L. R., 18 Bom, 160,* followed. LAKHMIDAS RAMDAS v. JAMNADAS SHANKARLAL . . . I. L. R., 22 Bom., 304

289. ——— *Transfer of Property Act (IV of 1882), s. 82—Purchase by mortgagee at auction of portion of the mortgaged property—Effect of such purchase in reducing the mortgage-debt.*—When a mortgagee buys at auction the equity of redemption in a part of the

[illegible]

purchased bears to the value of the whole of the property comprised in the mortgage. *Lakhmidas Ramdas v. Jamnadas Shankar Lal, I. L. R., 22 Bom., 304,* followed. *Nand Kishore v. Hariraj Singh, I. L. R., 20 All, 23* ; and *Sumera Kuar v. Bhagwant*

[illegible]

RAM SARUP . . . I. L. R., 23 All., 284

MORTGAGE—*continued.*

7. TACKING.

290. ——— Principle of tacking—*Purchase of equity of redemption—English law.*—In 1840 *A* mortgaged certain lands to *B*, which he had granted in patni at a rent of R145. Subsequently in September 1844 *A* granted a fresh patni at a reduced rent of R90, and on the 9th October 1844 *A* mortgaged the same lands to *C*. In 1856 *C* obtained a decree for the redemption of the mortgage to *B*, and he paid off the debt to *B*, but it did not appear that he took an assignment of the mortgage for the purpose of keeping it on foot as a security against incumbrances created by *A* subsequently to the date of that mortgage, and prior to that of the mortgage to himself; and in 1862 he obtained a final ... *C* ... the ... Th ... m ... M ...

291. ——— *English law.*—The English law of tacking is not recognized in the Courts of this country. UDAYA CHANDRA RANA *v.* BHAJAHARI JANA . . 2 B. L. R., Ap., 45

ODOY CHURN RANA *v.* BROJOHURY JANA [11 W. R., 310

292. ——— *Redemption.*—The owner of a house in 1861, in consideration of R400, mortgaged it to the defendant, and put him into possession. The mortgage-deed needed no registration, and was not registered. The mortgagor next mortgaged the house in 1873 to the plaintiff for R300 by a deed duly registered. He again in 1874 borrowed on the same security a further sum of R500 from the defendant, and executed in his favour a deed of mortgage which was duly registered. The plaintiff in 1876 sued the mortgagor for possession, and obtained a decree, the execution of which the defendant resisted. The plaintiff now sued the defendant to eject him, and to obtain possession of the mortgaged property until payment of the amount due on his mortgage. The defendant denied the plaintiff's mortgage and set up his own two mortgages, and claimed to be paid the amount due on both of them before he could be called upon to ...

... gaged property until his own first mortgage was redeemed by the plaintiff; but that the defendant could not claim to retain possession, as against the plaintiff, until his second mortgage, as well as his first, was paid off since plaintiff's mortgage was prior in date to, and therefore was to be preferred before, the second mortgage of the defendants. NARAYAN VENKOBA *v.* PANDURANG KAMAT [I. L. R., 7 Bom., 526

293. ——— *Redemption.*—The mortgagor of an estate gave the mortgagee four successive bonds for the payment of money, in each of which it was stipulated that, if the amount were not paid on the due date, it should take priority of the amount due under the mortgage, and redemption of the mortgage should not be claimed until it had been satisfied. The representative in title of the mortgagor subsequently sued the mortgagee for possession of such estate on payment merely of the mortgage-money. *Held* that, although such bonds did not in so many words create charges on such estate, yet inasmuch as it appeared from their terms that it was the intention of the parties that the ...

... merely of the mortgage-money. AILU KHAN *v.* ROSHAN KHAN . . I. L. R., 4 All., 85

294. ——— *Redemption*— ...

... due date, it should take priority of the amount due under the mortgage, and that redemption of the mortgage should not be claimed until the bond had been satisfied. The assignee of the equity of redemption sued for possession of the estate on payment merely of the mortgage-money. *Held* that the two subsequent bonds did not create a further charge on ...

295. ——— *Subsequent agreement—Covenant to pay an additional sum—Charge—Compromise.*—In a suit on a mortgage, dated 1878, it appeared that the premises had been mortgaged in 1874, but the mortgagor had been left in possession under a lease; and that a suit brought by the mortgagee (on the rent reserved by the lease falling into arrears) was compromised in 1877 on the terms that R3,680 should be paid together with the amount secured by the mortgage of 1874. The instrument of compromise was not registered, and the amount was not paid. *Held* that the plaintiff's mortgage was subject to the mortgage of 1874 only, and not to the arrangement comprised in the compromise. *Quære*—Whether the compromise would, if registered, have charged the land with R3,680, or whether its effect was merely to make the equity of redemption conditional on payment of that amount, in such a manner as not to affect the rights of the subsequent mortgagee. UNNI *v.* KAGAMMAL [I. L. R., 18 Mad., 363

MORTGAGE—*continued.*

8. REDEMPTION.

(*a*) RIGHT OF REDEMPTION.

296. ———— **Essential characteristic of mortgage**—*Agreement waiving right to redeem*—Where a document is, on its face, a mortgage, the right to redeem is so much an essential as not to be variable by agreement. The question of intention extra the document does not therefore arise. SAMATHAL *v.* MATHOOSHI KAMATCHI AMMA BOYI SAIB AYERGUL . . . . 7 Mad., 395

297. ———— *Usufructuary mortgage—Alteration of original transaction.*—When the original transaction is an usufructuary mortgage, the mortgagee is entitled to nothing beyond the repayment of his principal and interest from the usufruct of the property. The Court will not allow additional advantages to be obtained through the necessity of the debtor, by the conversion of a mortgage into a transaction of a different nature. Once a mortgage always a mortgage, is a principle not to be departed from. Consequently an estate mortgaged is always redeemable. KASEENAUTH *v.* BHEEKAREE LOLL. TEWAREE LOLL *v.* KASSEENAUTH [W. R., F. B., 79

ASAPAL SINGH *v.* NUNKOO SINGH . 3 Agra, 216

298. ———— **Right to get back land on deposit in usufructuary mortgage**—*Beng. Reg. I of 1798—Demand of land in excess*—The mortgagor under a zur-i-peshgi is entitled, under s. 2, Regulation I of 1798, to demand back his land immediately after making his deposit. If by mistake or otherwise he demands more land than is comprised in the mortgage, that is not a matter which can justify the mortgagee in keeping possession of land which is in fact comprised in it. MOHUN LAL *v.* ALI AFZUL . W. R., 1864, 219

299. ———— **Objection to redemption**—*Purchaser who has not paid purchase money.*—In a suit brought to redeem the purchased property, the mortgagee cannot avail himself of the objection that the full amount of purchase money has not been paid. The mortgagee has only the right to be satisfied that the person claiming redemption is not a stranger, but one to whom the equity of redemption has been transferred by a *bond fide* sale. HEERA SINGH *v.* RAGHO NATH SUHAI. BHURTH SINGH *v.* RAGHO NATH SUHAI . . . . . 3 Agra, 30

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

301. ———— **Mortgage by conditional sale.** [illegible]

future date fixed. The deeds were followed by transfer of possession to the vendee, and his receipt of the profits. The vendor did not exercise his right of repurchase, but, after many years, gave notice of his intention to redeem, and brought this suit to enforce his right of redemption as upon a mortgage by conditional sale. It was held that oral evidence for the purpose of ascertaining the intention of the

that the parties intended to effect a mortgage by conditional sale. In such a mortgage it is not necessary that the mortgagor should make himself personally liable for the repayment of the loan. (2) The equity of redemption was rendered applicable to a mortgage of this class by the effect of the Regulation XVII of 1806. The Transfer of Property

in the Courts below. (4) Whether such a mortgage would be redeemable under the Regulation law independently of intention indicated in the instrument was not a point calling for decision. Indications in this case appearing in the deeds were—(*a*) words in the agreement for repurchase similar to those in Regulation I of 1798, relating to the deposit of mortgage money in the Treasury, giving the like power to deposit; (*b*) the inclusion in the present security of a sum due on an account open to be increased, other than the price fixed for the repurchase; and other matters. *Bhagwan Sahai v. Bhagwan Din, I. L. R., 12 All., 387. L. R., 17 I. A., 98,* distinguished. BALKISHEN DAS *v.* LEGGE . I. L. R., 22 All., 149 [L. R., 27 I. A., 58 4 C. W. N., 153

Affirming decision of the High Court in [I. L. R., 19 All., 430

302. ———— *Beng. Reg. XVII of 1806, ss. 7, 8.* In the part of India where Bengal Regulation XVII of 1806 is in force, the right to redeem a mortgage by conditional sale depends entirely upon it, whatever may be the true

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

by the terms of the condition, treated as a separate

303. ——— *Mortgage by conditional sale before Transfer of Property Act.*—Suit, in 1889, to redeem a mortgage of 1880, which contained a provision that, if the mortgage-money was not paid in March 1882, the mortgage premises should become the absolute property of the mortgagee. *Held* that the plaintiff was entitled to redeem. *Ramasami Sastrigal* v. *Samiyappanayakan, I. L. R., 4 Mad., 179,* explained and followed. VENKATASUBBAYYA v. VENKATGA . I. L. R., 15 Mad., 230

304. ——— **Mortgage becoming sale if not redeemed in certain time**—*Madras law of mortgage—Beng. Reg. XVII of 1806.*—In a suit instituted in 1853 to redeem a mortgage containing a clause making it an absolute sale in default of redemption by a certain date,—*Held* that, in the Madras Presidency, effect must be given to that clause, the Regulation XVII of 1806 not being applicable. PATTABHIRAMIER v. VENKATAROW NAICKEN

[7 B. L. R., 136: 15 W. R., P. C., 35
13 Moore's I. A., 560

305. ——— **Right to redeem by deposit of principal**—*Possession of mortgagee.*—On a question of a right of a mortgagor to redeem by deposit of the principal sum due only, the length of possession by the mortgagee is immaterial. ABDULLA KHAN v. UPENDRA CHANDRA 6 B. L. R., Ap., 53

S. C. ABDOOL KHAN v. UPENDRA CHUNDER BHUTTACHARJEE . . . . 14 W. R., 278

306. ——— **Time for redemption**—*Stipulation for payment by instalments.*—A mortgage-deed stipulated for the liquidation of a moiety of the debt by the usufruct of certain land for seven years, and, as to the other moiety, stipulated for its repayment by instalments in five years, and, in default, for its liquidation by the possession and the usufruct of the same land being continued and

307. ——— *Decree for redemption—Execution barred by limitation—Second suit to redeem.*—In a suit for redemption of a mortgage a decree was passed by consent to the effect

mortgagors in the land was purchased in execution of a decree by the plaintiff, who thereupon sued the mortgagees to redeem the land. *Held* that the plaintiff was entitled to redeem. PERIANDI v. ANGAPPA . . . I. L. R., 7 Mad., 423

308. ——— **Omission to execute decree for redemption in time**—*Effect of fresh suit for redemption.*—Where a decree for redemption is obtained, but is not executed within the prescribed period for execution, the mortgagee does not, by omission of the mortgagor to execute the decree, cease to be the mortgagee, but the mortgagor or his representative may still maintain a fresh suit for redemption. CHAITA v. PURUM SOOKH

[2 Agra, 256

309. ——— **Suit for redemption**—*Conditional decree—Failure of mortgagor to pay in accordance with decree—Subsequent suit for*

still due to the latter, and the decree provided that, if such sum were not paid within the time specified, the suit should stand dismissed. The plaintiff failed to pay, and the suit accordingly stood dismissed. Subsequently he again sued for redemption, alleging that the mortgage-debt had now been satisfied from the usufruct. *Held*, having regard to the distinction between simple and usufructuary mortgages, that the decree in the former suit only decided that, in order to redeem and get possession of the property, the mortgagor must pay the sum then found to be due by him to the mortgagee, and did not operate as *res judicata* so as to bar a second suit for redemption, when, after further enjoyment of the profits by

mortgagor for possession on the ground that the mortgage-debt has been satisfied from the usufruct, and in which the plaintiff is ordered to pay something because the debt has not been satisfied as alleged.

2 Agra, 256, and *Anrudh Singh* v. *Sheo Prasad, I. L. R., 4 All., 481,* referred to. MUHAMMAD SAMIUDDIN KHAN v. MANU LAL

[I. L. R., 11 All., 386

310. ——— *Omission to set aside decree and sale of mortgaged property under it—Refusal of redemption.*—Redemption of a

MORTGAGE—*continued*

8. REDEMPTION—*continued*.

set aside. MALKARJUN BIN SHIDRAMAPPA PASARE v. NARHARI BIN SHIVAPPA L. R., 27 I. A., 216

311. — — **Redemption of mortgaged land subsequently assessed with revenue.**—A mortgagor of lakhiraj land subsequently assessed with Government revenue is not entitled to redeem, except on payment of the amount paid by the mortgagee to Government for revenue, with interest in

payment into Court of the further sum paid for Government revenue. JOYPROKASH ROY v. OORJHAN JHA . 3 W. R., 174

313. ——— **Patnidar, Right of, to redeem.**—Terms upon which a patnidar was let in to redeem stated. FASIMUNNISSA BIBEE v. NILRATNA BOSE . . I. L. R., 8 Calc., 79 [9 C. L. R, 173 : 10 C. L. R., 113

314. ——— **Heir of mortgagor, Right of, to redeem**—*Right of purchaser—Limitation.*

purchaser took and retained possession. After two years the mortgagor died, leaving a will, in which he described his property, but did not mention the mortgaged factories The conveyance to the purchaser was produced, in which the mortgagor was made a

contract of sale to which the mortgagor assented. *Held*, secondly, that even had the contract included (as argued for appellant) an undertaking to indemnify from liabilities, the payments sought to be reimbursed were beyond six years, and no fraud was

MORTGAGE—*continued*.

8. REDEMPTION—*continued*.

proved; therefore as to these the suit was barred. DOUCETT v. WISE . 2 Ind. Jur., N. S., 280

315. ——————— *Conditional sale—Surety, Assignment to, from mortgagee—Right of redemption*.—On a mortgage of land with a proviso that in default of repayment of the money advanced the mortgage should be turned into a sale, a third party joined as surety, undertaking to repay the amount advanced if the mortgagor made

...efault ... took ...gagee. ...ld to redeem, and that as against him the surety could not claim to hold the lands as purchaser. GORAKI KANAJI v. NATHU BIN APPAJI 1 Bom., 135

316. ——— **Assignee of mortgagor, Right of, to redeem**—*Razinamah—Gatkuli tenure—Extinguishment of equity of redemption.*—A mortgage-deed of gatkuli land contained a clause by which the mortgagor agreed, at the expiration of the period for which the mortgage was made, to give a razinamah of the mortgaged land In

the mortgagor was thereby extinguished. RANEE VALAD AVAJI MALI v. RAMA BAI KOM MAHADU MALI . . . 6 Bom., A. C., 265

317. ——— **Puisne mortgagee, Right of, to redeem**—*Prior mortgagee.*—A puisne mortgagee is entitled to redeem from the prior mortgagee who obtains a foreclosure decree in a suit to which the puisne mortgagee is not made a party or from the purchaser in the foreclosure suit; and it is immaterial whether the puisne mortgage is or is not registered, or whether the prior mortgagee at the date of the suit had or had not notice of the puisne mortgage The plaintiff charging the defendants with collusion sued to eject them, but the Court found he was only a puisne mortgagee, and one of the defendants a prior mortgagee. The Court, however, allowed the plaintiff to change his case, and in the same suit permitted him to redeem the defendant. SANKANA KALANA v. VIRUPAKSHAPA GANESHAPA [I. L. R., 7 Bom., 146

318. ——————— *Redemption of first mortgage by further mortgage*—*Held* that a mortgage contract received as a security for a repayment of loan does not incapacitate the mortgagor from any other dealing ...

the land, —held that a second zur-i-peshgi to the plaintiff made after the expiration of the nine years' term, for the *bonâ fide* purpose of paying off the debt due on the first mortgage, was not voidable as contravening the terms of the first mortgage lease, and the plaintiff was entitled to sue to redeem the

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

first mortgage. DOOKHCHORE RAI *v.* HIDAYUTOOLLAH . . Agra, F. B, 7: Ed. 1874, 5

See MAHOMED ZAKAOOLLA *v.* BANEE PERSHAD [1 N. W., Ed. 1873, 135

SHEOPAL *v.* DEEN DYAL . 5 N. W., 145

318. ——— Purchaser of equity of redemption, Right of, to redeem—*Usufructuary mortgage followed by sale—Revival of mortgage by cancelment of sale—Attachment in execution of*

mortgagee, whereupon the sons of *Z* sued their father and the mortgagee, purchaser, to have the sale set aside as invalid under Hindu law, and in August 1864 obtained a decree in the Sudder Court setting aside

and to eject the mortgagee, purchaser, but must be held estopped from pleading that that sale was invalid In November 1867, one *K* having caused the

rights and interests of *Z* and his sons were sold in the execution of the decree, *K* purchasing them In 1878 *K* sued as the purchaser of the equity of redemption, for the redemption of the mortgage of 1859. *Held* that *K* was entitled to redeem the property. *Held* also that, the mortgagee not having contested in a suit the order dismissing his objection to the sale of the property in execution of *K*'s decree, he could not deny that *K* had purchased the rights and interests remaining in the property to *Z* and his sons. *Held* also that the mortgagee had no lien on the property in respect of his purchase money. *Held* also that, it being stipulated in the deed of mortgage that the mortgagee should pay the mortgagor a certain sum annually as "malikana," and the mortgagee not having paid such allowance since the date of the sale, the plaintiff was entitled to a deduction from the mortgage-money of the sum to which such allowance amounted. BASANT RAI *v.* KANAUJI LAL [I. L. R., 2 All., 455

320. ——— Purchaser of property, Right of, to redeem—*Suit for ejectment where there is an equitable lien on the property.*—In

the representatives of *R C* on a mortgage-bond under which a sum of money was alleged to have been secured upon the said property, and obtained a decree against the defendants personally which did not direct sale of the mortgaged property. The plaintiff's ancestor bought the property with the knowledge of the mortgage. *K R* in 1868, in execution, sold the right, title, and interest of her judgment-debtors in the property to the defendants who paid R5,000 as consideration-money and obtained possession. In a suit to eject the defendants on the ground that the latter obtained no title to the property by their purchase,—*Held* that, so far as the defendants' money had gone to pay off the charge which *K R* had on the land to that extent, they were entitled to stand in her shoes as an incumbrancer; and that the suit, as far as regards the land covered by the mortgage-bond, must be taken to be a redemption

v. DULLEE CHAND . . . 18 W. R., [illegible]

321. ——— Right to redeem sub-tenures purchased by mortgagee—*Acquisitions by mortgagor and mortgagee.*—*Semble*—Under the

talukhdar granted an usufructuary mortgage of a portion of his talukh, in respect of which there existed

plaintiff was entitled to the possession of the estate as

MORTGAGE—*continued.*

8. REDEMPTION—*continued*

estate with all the rights and privileges enjoyed by the latter. KISHENDATT RAM *v.* MUMTAZ ALI KHAN [I. L. R., 5 Calc., 198: 5 C. L. R., 213 L. R., 6 I. A., 145

322. ——— Right where mortgagee has purchased equity of redemption—*Act VI of 1855, Construction of—Sale of legal and equitable rights of judgment-debtors*—Cl. 1, s. 1, Act VI of 1855, shows that the statute was designed for the benefit of creditors, and that it authorized sale of both the legal and equitable rights of judgment-debtors. Under this clause, therefore, an equity of redemption was a kind of property that might be seized and sold *A*, a mortgagee who takes from *B* as security an existing mortgage from *C* to *B*, stands in the same position towards, and is subject to the

cl. 5, s. 1, Act VI of 1855. *Held*, in a suit by the

to sale and conveyance of his rights and interests under the mortgage. TOYLUCKOMOHUN TAGORE *v.* GOBIND CHUNDER SEN [1 Ind. Jur., O. S., 123: 1 Hyde, 289

323. ——— Redemption where mortgagee has partitioned property—*Interference*

324. ——— Alienation by mortgagee

325. ——— Right of purchaser to redeem—*Effect of sale by mortgagor.*—Where a

326. ——— Clause for conditional sale —*Effect of, on right of redemption.*—A clause of conditional sale contained in a mortgage-deed does not prevent the redemption of the mortgage. KANAYALAL *v.* PYARABAI I. L. R., 7 Bom., 139

327. ——— Settlement with mortgagee—*Effect of, on right of redemption.*—The mere settlement of

[1 Agra, 224

328. ——— Bar of right of redemption—*Foreclosure—Accounts.*—In a suit for redemption of a mortgage the Zillah Court declared the mortgagors (appellants) entitled to redemption, the mortgagees in possession (respondents) having fully paid themselves by receipt of rents and profits. In a special appeal, the Sudder Court reversed the

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329. ——— Condition preventing effect of right of redemption—*Onerous condition in mortgage-deed—Condition that after redemption the mortgagee should continue in possession as perpetual tenant not enforceable.*—A condi-

[I. L. R., 9 Bom., 524

330. ——— Decree for redemption within six months—*Transfer of Property Act (IV of 1882), proviso to s. 93—Mortgage—Expiration of six months without payment—Application after expiration of six months to extend the time for redemption.*—In redemption suits the original decree (passed under s. 92 of the Transfer of Property Act, is only in the nature of a decree *nisi*,

before the decree absolute is made. NANDRAM *v.* BABAJI . . . I. L. R., 22 Bom., 771

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

331. ———— Mortgage with proviso that in case of non-redemption in a prescribed time it should become a sale—*Razinama by mortgagor declaring sale to mortgagee—Transfer of possession to mortgagee — Execution of equity of redemption—Subsequent sale by mortgagor of equity of redemption.*—In 1848 *B* and *R* mortgaged a piece of land to *V*. It was to be redeemed in eight years, or else to become the absolute property of the mortgagee. It was not redeemed; and in 1859 *B*, in whose name the land was entered in the Government records, executed a razinama in favour of *V*, and *V* passed a kabuliat accepting the land. *B* and *R* then became *V's* tenants, and were, as such, successfully sued by him for rent in 1863. In 1872 *V* sold the land to *N*, who again sold it to the defendant. The plaintiff, as purchaser from the original mortgagors (*B* and *R*) of their alleged equity of redemption, filed the present suit to redeem the property. *Held* that, as the razinama given by *V* contained no reservation, and as it was accompanied by a transfer of possession, it had the effect of a conveyance of all the mortgagor's rights to the mortgagee. It operated to extinguish the equity of redemption, notwithstanding any misconception or ignorance on *V's* part of his rights as mortgagor. Under the Indian Contract Act (IX of 1872, s. 21), error of law does not vitiate a contract; much less will it annul a conveyance after the lapse of many years, unless there has been some fraud or misrepresentation and an absence or negligence. VISHNU SAKHARAM PHATAK *v.* KASHINATH BAPU SHANKAR . . I. L. R., 11 Bom., 174

332. ———— Redemption of mortgage before order absolute—*Foreclosure decree—Order absolute—Transfer of Property Act (IV of 1882), s. 87.*—In a foreclosure action the mortgagor can redeem at any time until the order absolute is made under s. 87 of the Transfer of Property Act, 1882. PORESH NATH MOJUMDAR *v.* RAMJODU MOJUMDAR . I. L. R., 16 Calc., 246

SOMESH *v.* RAMKRISHNA CHOWDHRY
I. L. R., 27 Calc., 705
4 C. W. N., 699

NARAYANA REDDI *v.* PAPUYYA
I. L. R., 22 Mad., 133

333. ———— Right to redeem at any time prior to the passing of the order absolute under s. 87—*Transfer of Property Act (IV of 1882), s. 87.*—A mortgagor who has obtained a decree for redemption of his mortgage can pay in the redemption money and obtain redemption at any time until an order absolute under s. 87 is made against him. *Poresh Nath Mojumdar v. Ramjodu Mojumdar, I. L. R., 16 Calc., 246*, and *Raham Ilahi Khan v. Ghasita, I. L. R., 20 All., 375*, referred to. NIHALI *v.* MITTAR SEN
I. L. R., 20 All., 446

334. ———— Unregistered agreement by mortgagor to sell to mortgagee — *Subsequent assignment of equity of redemption to third person for value, but with notice of agreement.*—In a suit for redemption filed by an assignee for value of the equity of redemption against a mortgagee in possession, it was found that the mortgagor had agreed with the defendant to sell the mortgaged premises to him, that part of the purchase-money had been acknowledged as paid, and that the balance had been tendered in pursuance of the agreement. It was further found that the plaintiff had taken his assignment with notice of the above agreement and tender. *Held* that the plaintiff, having purchased the equity of redemption with notice as above, was not entitled to redeem. *Per cur.*—The plaintiff having knowledge of the agreement was put upon enquiry to ascertain whether the tender had been made, and whether there was any objection to his purchase on that ground. ADAKKALAM *v.* THEETHAN
I. L. R., 12 Mad., 505

335. ———— Time fixed for redemption—*Transfer of Property Act, ss. 92, 93—Application to execute the decree.*—In a suit to redeem a kanam a redemption decree was passed which provided that the kanam amount and the value of improvements be paid in three months. The decree amount was not paid within that period, but the decree-holder applied to execute the decree at a later date. *Held* that the application did not fall under the proviso of s. 93 of the Transfer of Property Act, and that the decree-holder was not then entitled to have the decree executed. *Poresh Nath Mojumdar v. Ramjodu Mojumdar, I. L. R., 16 Calc., 246,* [illegible] contain the last clause mentioned in s. 92. ELAYIDATH *v.* KRISHNA . . I. L. R., 13 Mad., 267

336. ———— Limitation—*Date of accrual of cause of action—Mortgage—Transfer of Property Act (IV of 1882), ss. 86 and 87.*—*Held* that, where a right of pre-emption arises on the foreclosure of a mortgage under the Transfer of Property Act, 1882, the right to sue for pre-emption accrues, not from the date fixed in the decree under s. 86 as the date upon which the payment is to be made by the mortgagor, but from the date on which the mortgagee obtains an order absolute under s. 87 of the said Act. *Raghubir Singh v. Nanda Singh, Weekly Notes, All., 1891, 134; Ali Abbas v. Kalka Prasad, I. L. R., 14 All., 405*, and *Poresh Nath Mojumdar v. Ramjodu Mojumdar, I. L. R., 16 Calc. 246*, referred to. ANWAR-UL-HAQ *v.* JWALA PRASAD
I. L. R., 20 All., 358

See BATUL BEGAM *v.* MANSUR ALI KHAN
I. L. R., 20 All., 315

and RAHAM ILAHI KHAN *v.* GHASITA
I. L. R., 20 All., 375

337. ———— Adverse possession—*Possession obtained by mortgagee from Mamlatdar—Non-payment of assessment by mortgagor—Payment by mortgagee—Bombay Land Revenue Code (Bom.*

MORTGAGE—*continued*

8 REDEMPTION—*continued.*

Act V of 1879), ss 56, 57, 153—In a suit for redemption of land mortgaged to the defendant in 1870, the defendant pleaded adverse possession. In 1876 he had obtained a decree for sale which he had not executed. In 1877, the Mamlatdar being about to sell the land for arrears of assessment, the defendant paid the amount, and was thereupon put into possession by the Mamlatdar He had retained possession ever since and had continued to pay the assessment. *Held* that the plaintiff was entitled to redeem It did not appear that the land had been declared to be forfeited by the Collector under ss 56, 57, and 153 of the Land Revenue Code (Bombay Act V of 1879). The fact that the defendant

plaintiff The defendant not having exercised his right to sell under the decree of 1876, the plaintiffs were now entitled to redeem, the sum found due by the decree at its date being taken as *res judicata* between the parties DASHARATHA *v.* NYAHAL CHAND . . . I. L. R, 16 Bom, 134

338. ——— Undertaking not to alienate the equity of redemption—*Right of assignee of mortgagor—Assignment of the equity of redemption—Repayment of mortgage-debt*—Where a mortgagor undertook that he would not alienate the equity of redemption, and that the mortgagee should not be obliged to receive the money from any one but

effect to When a mortgage-debt is contracted in a particular currency, it should be repaid in that currency TRIMBAK JIVAJI DESHAMUKHA *v.* SAKHARAM GOPAL I. L. R., 16 Bom., 599

339. ——— Prior and puisne incumbrances—*Puisne incumbrancer not made a party to suit upon prior incumbrance.*—If a prior incum-

340 ——— Right to redeem first mortgage independently of later mortgage—*Mortgage to a firm—Subsequent mortgage to one member of the firm for personal loan, with stipulation for payment of new debt before prior mortgage debt*—On the 13th July 1877 a firm, of which defendants Nos. 1 to 4 were members, lent money to N on mortgage of certain property. Subsequently defendant No 2 personally made a further

MORTGAGE—*continued*

8 REDEMPTION—*continued.*

loan to N, who executed two san-mortgage-deeds to

redeem. The defendants contended that the plaintiff was bound to pay off the two later bonds as well as the original mortgage-debt. *Held* that the later loan by defendant No 2 being a personal loan by him, the firm, as such, had no equity to insist on its being paid before the mortgage was redeemed, whatever right defendant No 2 in his personal capacity might have But in this suit, which was one to redeem the mortgage, he was a

341. ——— Right to redeem made conditional on payment by mortgagor of another debt as well as mortgage-debt—*Effect of that other debt becoming barred by limitation—Right to redeem mortgage still subject to condition*—A mortgage-bond contained a clause stipulating that the mortgagors were not to redeem the mortgaged property without paying not merely the amount of the mortgage-debt and interest, but also the amount due on a certain bond executed at the

payment of what was due on the instalment bond—a condition which was unsatisfied as long as such sum remained unpaid, although in contemplation of law there might be no longer a bond debt still in existence owing to a decree having been passed on the bond, and that decree having become barred by limitation. SUNDAR MALHAR PATEL *v.* BAPUJI SHRIDHAR [I. L. R., 18 Bom., 755

342. ——— Decree for redemption omitting to state consequence of non-payment of mortgage-money within time specified—*Limitation—Transfer of Property Act (IV of 1882), s 92*—Where a Court gave plaintiff a decree for redemption of a mortgage conditioned on payment by him of the mortgage-money within a specified time from the date of the decree, but omitted to state in such decree what would be the consequence of the plaintiff's default in so paying in the mortgage-money,—*Held* that such omission could not operate to extend the period available to the plaintiff for payment beyond the maximum term provided for by s. 92 of Act IV of 1882. *Jai Kishen v. Bhola Nath, I. L. R., 14 All, 529*, referred to.

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

Bandhu Bhagat v. *Muhammad Taji, I. L. R., 14 All., 350,* dissented from. WAZIR *v* DHUMAN KHAN [I. L. R., 16 All., 65

343 ———— **Two mortgages between the same parties over the same property—Right to redeem one without the other—** *Tacking—Transfer of Property Act (IV of 1882), ss 61 and 62—Stat. 44 & 45 Vict., c. 41, s 17.* —A mortgagee held two mortgages over the same property from the same mortgagor, the one being a usufructuary mortgage in respect of interest only, and the other being a simple mortgage. The mortgagor sued to redeem the usufructuary mortgage. The mortgagee objected that the mortgagor was bound to redeem both mortgages. *Held* that the mortgagor had the right to redeem one mortgage without redeeming the other, and that, in the absence of special contract to redeem both mortgages simultaneously, he could not be compelled to redeem them both lost. *Vithal Mahadev* v. *Daud valad Muhammad Husen, 6 Bom, A C., 905,* dissented from. *Shuttleworth* v. *Laycock, 1 Vern, 245,* and *Jennings* v. *Jordan, L. R, 6 App. Cas., 698,* referred to. TAJJO BIBI *v.* BHAGWAN PRASAD [I. L. R., 16 All, 295

344. ———— **Right of mortgagor making**

VALLABHA VALIYA RAJA *v* VEDAPURATTI [I. L. R., 19 Mad., 40

345 ———— **Decree for foreclosure—** *Transfer of Property Act (IV of 1882), s. 87—Mortgagor's application for extension of time* —In a suit on a mortgage a decree for foreclosure was passed, a period of three months being fixed for the discharge of the

then applied for and obtained an extension of time for payment, and he made the payment and recovered possession *Held* that the order was right since no order absolute of foreclosure had been made after notice to the mortgagor NARAYANA REDDI *v* PAPAYYA . . . I. L. R., 22 Mad, 133

346. ———— **Mortgage with possession—** *Sale for arrears of revenue caused by default of mortgagee—Subsequent suit by mortgagor for redemption where mortgagee has become the purchaser.*—Where mortgaged property was sold at a

default of a mortgagee, it does not take away the

mortgagor's right to redeem the mortgage to recover the land. KALAPPA *v.* SHIVAYA [I. L. R., 20 Bom, 492

347. ———— **Rights of redemption and foreclosure—** *Power expressly given to the mortgagee to call in his money before the expiry of the term, Effect of, on right to redeem—Limitation put on right to redeem—Agreement restraining the right of redemption.*—The right of redemption and the right of foreclosure are always co-extensive, and from the postponement of the former the Court will infer an intention to postpone the latter in the absence of express provision on the point; where there is such express provision, giving the mortgagee power to foreclose at any time, any stipulation postponing the mortgagor's right to redeem is unilateral and void of consideration A Court of equity will not enforce any agreement in restraint of the right of redemption which is oppressive and unreasonable as giving the mortgagee an advantage not belonging to the contract of mortgage. A mortgagor cannot, by any contract entered into with the mortgagee at the time of the mortgage, give up his right of redemption or fetter it in any manner by confining it to a particular time or a particular description of persons. ABDUL HAK *v.* GULAM JILANI [I. L. R., 20 Bom., 677

the prior kanam. PAYA MATATHIL APPU *v* KOVAMEL AMINA . I. L. R, 19 Mad., 151

349. ———— **Suit by legitimate son of illegitimate member of the family to redeem a mortgage made by a previous legitimate owner.**—The right, of an illegitimate son in a Hindu family to receive maintenance from the family property is a purely personal right, and does not

SINGH *v.* ROSHAN SINGH . I. L. R., 16 All.,

On appeal to the Privy Council—ROSHAN SINGH *v.* BALWANT SINGH I. L. R, 22 All., 191 [4 C. W. N., 353

where, however, this point was not decided.

350. ———— **Decree giving a defendant second mortgagee, a right to redeem a prior mortgage within a fixed period—** *Effect of appeal—Limitation.*—When a decree gives a right

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

decree, the right of redemption will be barred if not exercised within the period so limited. The principle in *Jappar Nath Pande* v. *Jokhu Tewari, I. L. R., 18 All., 223,* applied. CHIRANJI LAL *v.* DHARAM SINGH . . I. L. R., 18 All., 455

351 ———— **Execution of decree for redemption**—*Transfer of Property Act (IV of 1882), ss. 87, 89, and 92—Extension of time limited for payment of decretal amount.*—In the case of a decree for redemption or for foreclosure under the Transfer of Property Act 1882, both of which decrees stand in this respect upon the same footing, no extension of the time limited by the decree for payment of the decretal amount can be made except for good cause shown, whether the order under s. 87, in a suit for foreclosure or the order under s. 93, in a suit for redemption, has been applied for or not. *Poresh Nath Mojumdar* v. *Ramjodu Mojumdar, I. L. R., 16 Calc., 246,* dissented from. *Kanara Kurup* v. *Govinda Kurup, I. L. R., 16 Mad., 214,* distinguished. RAM LAL *v.* TULSA KUAR [I. L. R., 19 All., 180

See RAJARAM SINGHJI *v.* CHUNNI LAL [I. L. R., 19 All., 205

HARJAS RAI *v.* RAMESHOR I. L. R., 20 All., 354

But *see* KEDAR NATH RAUT *v.* KALI CHURN RAUR [I. L. R., 25 Calc., 703

352. ———— **Stipulation postponing the right to redeem beyond the time when the mortgagee can require payment of the mortgage-debt.**—A stipulation postponing the mortgagor's right to *redeem beyond the time when* the mortgagee can call in his money is inoperative. *Abdul Hak* v. *Gulam Zilani, I. L. R., 20 Bom., 677,* followed. SARI *v.* MOTIRAM MAHADU [I. L. R., 22 Bom., 375

But *see* KRISHANRAJI *v.* MAHESAVAR LAKSHMAN GONDHALEKAR . . I. L. R., 20 Bom., 346

353. ———— **Fetter on the equity of redemption**—*Agreement by mortgagor to sell the mortgage premises to the mortgagee.*—A stipulation in a mortgage, that if the mortgage-money is not paid on the due date the mortgagor will sell the property to the mortgagee at a price to be fixed by umpires, is unenforceable as constituting a fetter on the equity of redemption. KANARAM *v.* KUTTOOLY [I. L. R., 21 Mad., 110

354. ———— **Covenant fettering right of redemption**—*Covenant for pre-emption of mortgaged property in favour of mortgagee—Collateral advantage—Transfer of Property Act (IV of 1882), s. 60.*—A provision in a mortgage which has the effect of preventing redemption of the mortgaged property on payment of principal, interest, and costs, in accordance with the terms of the mortgage, [illegible] tionable on the ground of [illegible] ness. *Held* that a covenant giving the mortgagee a right of pre-emption in respect of the mortgaged property at a price fixed by reference to another share in the same village was *primâ facie* a good covenant and enforceable by the mortgagee. *Biggs* v. *Hoddinott, L. R., 1898, 2 Ch., 307; Santley* v. *Wilde, L. R., 1899, 2 Ch., 474,* and *Orby* v. *Trigg, 9 Mod., 2,* referred to. BIMAL JATI *v.* BIRANJA KUAR . I. L. R., 22 All., 233

355. ———— **Right of mortgagor to redeem land so taken in exchange**—*Mortgagee taking* [illegible] The Forest Department, being desirous of [illegible] was arranged that *G* should allow the assessment to [illegible] exchange *G* had acquired the full ownership in it. *Held* that the plaintiff was entitled to redeem Survey No. 105. The mortgagee, *G*, had lost the mortgagor's equity of redemption in the mortgaged land by fraud, and the land (Survey No. 105) which he obtained in exchange was therefore subject to the mortgage. He held the equity of redemption in this land as trustee for the mortgagor. BABAJI *v.* MAGNIRAM . . I. L. R., 21 Bom., 336

356. ———— **Second suit for redemption**—*Transfer of Property Act (IV of 1882), ss. 92 and 93—Decretal money not paid within the time limited—Civil Procedure Code, s. 13—Res judicata—Right of suit.*—*Held* that a mortgagor, whether under a simple or a usufructuary mortgage who has obtained a decree for redemption and allows such decree to lapse by reason of his not paying in the decretal amount within the time limited for payment by the decree, cannot subsequently bring a second suit for redemption of the mortgage in respect of which such infructuous decree was obtained. *Gulam Hossein* v. *Alla Rukhee Beebee, 3 N. W., 62* and *Maloji* v. *Sagaji, I. L. R., 13 Bom., 567,* followed. *Hari Ravji Chiplunkar* v. *Shapurji Hormasji Shet, I. L. R., 10 Bom. 461,* referred to. *Muhammad Samiuddin Khan* v. *Mannu Lall, I. L. R., 11 All., 386; Sami Achari* v. *Somasundram Achari, I. L. R., 6 Mad., 119; Periandi* v. *Angappa, I. L. R., 7 Mad., 423;* and *Ramunni* v. *Brahma Dattan, I. L. R., 15 Mad., 366* dissented from. HAY *v.* RAZI-UD-DIN . . I. L. R., 19 All., 203

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

357. ——— **Right of member of family to redeem**—*Mortgage by manager of undivided family—Sale of mortgaged property under money-decree obtained by mortgagee in respect of other debts—Purchase without leave of Court by mort-*

the whole estate. In 1878, during *D*'s absence from his native village, *H* sued *S D* as the heir and representative of *S* in respect of other debts, and,

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suit against *H*, *S D* and the benami purchasers to redeem the properties so bought by *H*. The lower Courts found that the money-decree which *H* obtained and the execution-proceedings thereon bound the estate It was contended that the execution-

be redeemed as mortgagee. The sale was rendered nugatory, not by the provisions of s. 294 (though permission to bid granted under that section might have validated the purchase, but by the impossibility of a mortgagee by such sales and purchases freeing himself from the liability to be redeemed. MARTAND BALKRISHNA BHAT *v.* DHONDO DAMODAR KULKARNI . . . I. L. R., 22 Bom., 624

See MAYAN PATHUTI *v.* PAKURAN
I. L. R., 22 Mad., 347

358. ——— **Money decree obtained by mortgagee**—*Execution—Sale of mortgaged property in execution—Purchaser at such sale—Title of such purchaser—Transfer of Property Act (IV of 1882),*

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purchasing mortgaged property bonâ fide at a sale in execution of a money decree obtained by the mortgagee against the mortgagor obtains a good title free from the mortgage-lien, unless the sale is made subject

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

to it. HUSEIN *v.* SHANKARGIRI GURU SHAMBHUGIRI . . . . I. L. R., 23 Bom., 119

359. ——— **Impossibility of mortgagee freeing himself by such purchase from liability to be redeemed**—*Transfer of Property Act (IV of 1882), s. 99—Purchase by mortgagee holding decree for sale, of portion of mortgaged property, subject to mortgage—Trust Act (II of 1882), s. 88.*—A mortgagee having obtained a decree against his mortgagor for the sale of the mortgaged property, a portion of the latter was subsequently sold, subject to the said decree, in execution of a money-decree obtained by a third party against the mortgagor. The mortgagee purchased the portion so sold, whereupon the mortgagor presented a petition under s. 258 of the Code of Civil Procedure, claiming that the mortgagee was bound to discharge his mortgage-debt, and should be called upon to certify satisfaction of his decree. *Held* that petitioner was not entitled to the relief prayed for, but only to proceed upon the footing that the portion of the mortgaged property which had been purchased by the mortgagee remained,

principle of the impossibility of a mortgagee freeing himself from his liability to be redeemed as affirmed

contravened the principle underlying s. 99 of the Transfer of Property Act and expressed in s. 88 of the Indian Trusts Act. ERUSAPPA MUDALIAR *v.* COMMERCIAL AND LAND MORTGAGE BANK
I. L. R., 23 Mad., 377

360. ——— **Right of son not party to suit to redeem his share**—*Mortgage of annuity—Sale of attached property at instance of mortgagee—Civil Procedure Code, s. 244—Transfer of Property*

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

decree-holder. Plaintiff having instituted this suit to set aside the said sale or to have it declared that it

the sale, nor would any right of redemption be left to the plaintiff; (2) that inasmuch as the decree was, on its true construction, not a decree for sale, the case

which a sale of mortgaged property is permissible under that section are not satisfied unless there is a decree for sale, and in the absence of such decree, the sale is prohibited; (3) that although a sale in contravention of the section is not absolutely void for all purposes, it is at least void against all persons who were not parties to the suit in which the decree for money was obtained; (4) that the rights of a Hindu debtor's son may be concluded by a proper mortgage-decree and sale thereunder, or, if there is no mort-

tion of his share. MATHURAMAN CHETTI *v.* ETIAPPASAMI . . . I. L. R., 22 Mad., 372

361. ——— Right of redemption—*Involuntary alienation—Execution proceedings—Revenue Sale Law (Act XI of 1859), ss. 13, 54—Sale for arrears of Government revenue—Mortgage—Sale in execution of mortgage-decree.*—A

firmed on the 11th March 1892. In a suit instituted by the plaintiffs for the possession of the property

defendants, having purchased a share of an estate at a revenue sale, held under the provisions of ss. 13 and

SHEW GOBIND SHAW . I. L. R., 26 Calc., 966
[4 C. W. N., 317

MORTGAGE—*continued.*

8. REDEMPTION—*continued*

(*b*) REDEMPTION OF PORTION OF PROPERTY

362 ——— Division of liability under mortgage.—Where money is advanced on a mortgage-debt, the liability cannot be divided. MUJEEDOONISSA *v.* DILDAR HOSSEIN . . 14 W. R., 216

363. ——— Right to redeem share of property where part has been sold for arrears of revenue.—A mortgagor cannot redeem a share of the mortgaged property. This rule is not affected by the sale of part of the mortgaged lands for arrears of revenue. HASHIM *v.* AUJEET SINGH
[W. R., 1864, 217

RAM BALUK SINGH *v.* RAM LOLL DOSS
[21 W. R., 428

364 ——— Payment of proportionate

to relinquish any portion either on receiving a proportionate amount of what is due to him or otherwise. HURBEHUR SINGH *v.* DABEE SAHOY
[W. R., 1864, 260

365. ——— Redemption of separate

the entire debt. RAZEEOODDEEN *v.* JHUBBOO SINGH
[W. R., 1864, 75

366. ——— *Redemption of whole estate by one of several mortgagors*—Mortgage-debts are indivisible except where there is a dis-

ALI REZA *v.* TARASOONDEREE . 2 W. R., 150

367. ——— *Transfer of Property Act (IV of 1882), ss. 60, 82—Partial redemption—Contribution.*—*A* mortgaged two houses to *B* for R200. *C* purchased at a Court sale *A's* interest in one of the houses, and sold it to the plaintiff. The plaintiff sued to redeem the house, and

368 ——— *Payment of proportionate part of debt.*—Where moneys were advanced to several mortgagors, who owned the mortgaged land in certain defined shares, and the mortgagee, by purchasing the interest of some of the mortgagors in such land, broke up the joint security, the remaining mortgagors were held to be entitled to

MORTGAGE—*continued.*

8. REDEMPTION—*continued*

redeem on payment of a just proportion of the moneys advanced. KESREE v. SETH ROSHUN LAL [2 N. W., 4

369. — — — — *Payment of proportionate part of debt*.—The mortgagors in a joint mortgage transaction are jointly liable to the

SALIG RAM SINGH v. BAHUN RAI . 4 N. W., 92

370. — *Suit to redeem land in possession of co-owner of equity of redemption*.—Where a mortgagee in possession acquires a right to a share in the property mortgaged, he cannot be compelled to surrender the mortgaged property on payment of the debt, or any part of it on payment of a proportionate amount of the debt, until the mortgagor has, by a proper suit for partition, ascertained definitely the shares of the co-owners. MARAKAR AKATH KONDARAKAYIL MAMU v. PUNJAPATATH KUTTU . . . I. L. R., 6 Mad., 61

371. — *One of several joint mortgagors before partition—Mortgagee who has acquired a share in the equity of redemption.*

right. *Marakar Akath Kondarakayil Mamu* v. *Punjabatath Kuttu, I. L. R., 6 Mad., 61,* dissented from. MORA JOSHI v RAMCHANDRA DINKAR JOSHI . . . I. L. R., 15 Bom., 24

BHIKAJI DAJI v. LAKSHMAN BALA [I. L. R., 15 Bom., 27 note

372. — — — *Mortgage by three sharers—Partition of equity of redemption—Redemption by two sharers—Excess payment—Suit for redemption by the third sharer—Set-off*.—Three undivided brothers mortgaged certain land to the de-

and he allowed the plaintiff to deduct from the sum due on the mortgage R.69-13-4 which had been paid to the defendant by the other two mortgagors. On second appeal by defendant,—*Held*, varying the decree of the District Judge, that the plaintiff was not entitled to this deduction. The three mortgagors had severed their interests. The plaintiff's right to redeem his one-third was perfectly distinct from the redemption by the other two mortgagors, and there was no longer any joint account to which the sums previously paid could be credited. LAKSHUMAN GIRIRAYA NAIK v MADHAV KRISHNA SHENVI [I. L. R., 15 Bom., 186

373. — *Mortgage to co-sharer—Right of one or more co-owners to redeem in absence of partition*.—When several owners of an undivided share in immoveable property mortgage their share with possession to another undivided sharer, a smaller number than the whole body of co-mortgagors cannot sue to redeem the whole mortgage until there has been a partition of the property mortgaged among the several co owners. *Marakar Akath Kondarakayil Mamu* v. *Punjapatath Kuttu, I. L. R., 6 Mad., 61,* followed. *Naro Hari Bhave* v. *Vithalbhat, I. L. R., 10 Bom., 648,* distinguished. THILLAI CHETTI v. RAMANATHA AYYAN . . . I. L. R., 20 Mad., 295

374. — *Purchase of*

v. INDERJEET . . . . 6 N. W., 140

375. — *Purchaser of estate jointly and separately mortgaged by co-sharers*.—The purchaser of a share in an estate which had been jointly mortgaged by the several shareholders, and subsequently further charged by all by deeds to which one or more were parties, sued

376. — *Purchase by mortgagee of a share in mortgaged property—Redemption of mortgage*.—Where all the proprietors of an estate joined in mortgaging it, and the mortgagee subsequently purchased the share in such estate of one of the mortgagors, thereby breaking the joint character of the mortgage, and one of the mortgagors sued to redeem his own share and also the share of *B*, another of the mortgagors,—*Held* that he was entitled to redeem his own share, but he could not redeem *B*'s share against the will of the mortgagee. KURAY MAL v. PURAN MAL [I. L. R., 2 All., 565

377. — *Division of mortgagee-security—Acquisition by mortgagee of*

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

ownership of mortgaged property —The rule of law against breaking up the integrity of a mortgage-security is a rule aiming at the protection of the mortgagee, and is not applicable to cases where the mortgagee himself has acquired the ownership of a portion of the mortgaged property. KUDHAI *v.* SHEO DAYAL I. L. R., 10 All., 570

378. ——— *Transfer of Property Act (IV of 1882), s. 60—Suit to redeem entire mortgage by purchaser of equity of redemption of a portion. Indivisibility of mortgage.*—The mortgagors of four items of property originally mortgaged for an entire sum sold the equity of redemption of one item to the plaintiff who now sued the mortgagee to redeem the whole of the four items. *Held* that he was entitled so to do. A mortgage for an entire sum is from its very purpose indivisible, and that character of indivisibility exists with reference not only to the [illegible]

PARAMESWARAN NAMBUDRI [I. L. R., 22 Mad., 209

379. ——— *Purchase by one of several mortgagees of a portion of the mortgaged property—Redemption by one of the mortgagors of his own share.*—The fact that one of several mortgagees has acquired the equity of redemption of the share of one of the mortgagors in the mortgaged property does not give another of the mortgagors the right to redeem his share in the mortgaged property. *Sobha Shah* v. *Inderjeet*, 5 [illegible]

380. ——— *Usufructuary* [illegible]

gaged, on the ground that the mortgage-debt had been satisfied out of the usufruct,—*Held* that the plaintiffs could only claim their own shares, and the Court of first instance should determine the extent of the shares after making the other co-mortgagors parties. FAKIR BAKHSH *v.* SADAT ALI [I. L. R., 7 All., 376

381. ——— *Destruction of* [illegible]

entitled to redeem his land on payment of a proportionate amount of the mortgage-debt. MARANA AMMANNA *v.* PENDYALA PERUBOTULU [I. L. R., 3 Mad., 230

382. ——— Redemption of whole property by owner of portion—*Proportional contribution* —The owner of a part of the equity of redemption can redeem the whole property mortgaged from the mortgagee after paying the whole of the money due on the mortgage, and has a lien on the share of the co-owner for the proportional contribution of that share to the sum expended in redemption, and this right or interest is as capable of transfer as the aggregate group of interests called the ownership. *B* in one transaction mortgaged two fields (Nos. 20 and 22) to *J*. On the 16th January 1869, in execution of a decree against *B*, his interest in one of them (No 22) was sold, and *R* became the purchaser. *R*, however, did not take possession. On the 25th April 1877, *B* paid off *J's* [illegible]

assent. [illegible] eject [illegible] *V* had [illegible] not e[illegible] such [illegible]

other. On the other hand, *R* might redeem the whole and seek contribution from *B*, or *B* might redeem the whole and seek contribution from *R*. Whichever of the two redeemed, he would have a lien on the share of the other for the proportional contribution of that share to the sum expended in redemption. *B* did, in fact, redeem the mortgage to *J*, and thereupon became entitled to a lien on *R's* share of the property, *viz.*, field No. 22. He then mortgaged his whole interest to the defendant *V*, including his lien on No. 22. *R*, who had not yet obtained possession of No. 22, was entitled to get it only on paying off the amount of the lien which had passed to the defendant *V*. VITHAL NILKANTH PINJALE *v.* VISHVASRAV BIN BAPUJIRAV [I. L. R., 8 Bom., 497

383. ——— *Purchaser of equity of redemption of part of an estate.*—The purchaser of the equity of redemption of part of an estate under mortgage is entitled to redeem the [illegible]

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

estate in which he would have no interest but for the payment as a security for any surplus payment he may have made. ASANSAB RAVUTHAN *v.* VAMANA RAU . . . I. L. R., 2 Mad., 223

384. ——————— *Assignee of portion of equity of redemption—Suit for redemption.*—In a suit by a person to whom seven-eighths of the equity of redemption had been assigned for redemption, it was held that the plaintiff was entitled to

385. ——————— *Mortgage of*

sharers was mortgaged to the defendant. The mortgage was effected by the mortgagor as manager of all the co-sharers in union. In 1848 one of the co-sharers redeemed his share of two pies in the mortgaged property, and a further share of two pies therein was redeemed by a second co-sharer in 1867. The plaintiff was admittedly the owner of another

redeem his own two pies share, which had become separated from the rest. The plaintiff denied that

which by consent of all interested had become an estate wholly separated from the other parts of the original aggregate, the plaintiff would have been bound to set forth the transactions on which his right rested. RAGHO SALVI *v.* BALKRISHNA SAKHARAM . . . I. L. R., 9 Bom., 128

386. ——————— **Partial redemption**—*Beng. Reg. I of 1798, s. 5.*—Where the contract between a mortgagor and a mortgagee provides for the payment of the principal sum on a specified date, and for the payment in the meantime of interest thereon, the mortgagor cannot have a partial redemption of the property under Regulation I of 1798, which was not intended (s. 5) to alter the terms of a contract settled between the parties except as regards illegal interest Should the mortgagee consent to allow the *principal sum, or part of it, to be paid off before* the time fixed, he would be entitled, when agreeing to this, to make the payment of interest a condition of

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

such redemption. BURNO MOYEE DOSSEE *v.* BENODE MOHINEE CHOWDHRAIN . 20 W. R., 387

387. ——————— *Property redeemable on payment of two separate amounts.*—Where a certain quantity of land was the subject of one zur-i peshgi mortgage redeemable on payment of R225 to *K* and R275 to *M*, the mortgagees taking possession in moieties, it was held that the mortgagor could not recover any portion of the land until he had paid up all the money due upon the mortgage,—*e.g.*, as long as he had not paid up the amount due to *M*, he could not claim even the land allotted to *K*, whose portion had been liquidated IMAM ALI *v.* OOGRAH SINGH . . . 22 W. R., 262

388. ——————— *Purchase of*

the mortgagees, who were also purchasers of the equity of redemption of several of the lots. They made the purchasers of the other lots parties to the suit, and sought to redeem their own portion of the estate and to recover possession of their own portion and the portion purchased by the purchasers other than the mortgagees, on payment into Court of a sum sufficient to cover the proportion of the mortgage-debt attributable to the said parcels. The mode of applying the whole of the mortgage-debt between the different mouzahs of the mortgaged estate in such a case pointed out. AZIMUT (AJIMUT) ALI KHAN *v.* JOWAHIR SINGH

[14 W. R., P. C., 17 : 13 Moore's I. A., 404

BEKON SINGH *v.* DEEN DYAL LALL

[24 W. R., 47

389. ——————— *Mortgage of one estate consisting of several villages—Purchase by mortgagee of part of equity of redemption.*—Where sixteen villages were included in one mortgage and the equity of redemption in one village was sold to the plaintiffs,—*Held* that they were entitled

were not entitled to sue to redeem their one village alone. AHMED ALI KHAN *v.* JAWAHIR SINGH

[1 Agra, 3

390. ——————— *Purchase of equity of redemption of part of village.*—The entire village was mortgaged to the defendants, who subse-

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MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

mortgagees, who, on the occasion of the sale impugned, had sued to establish their claim to pre-emption, were not now entitled to question the sale, and secondly, inasmuch as the estate, or the portion of it held by the persons whom the plaintiff claimed to represent, was a joint estate, the plaintiff, having established his right to one moiety by purchase was entitled to redeem the whole, whether his title to the other moiety by heirship was proved or not. BITHAL NATH *v.* TOOLSEE RAM . . 1 Agra, 125

391. ——————— *Purchase of portion of equity of redemption.*—The equity of redemption in two mouzahs (the mortgage being joint) was sold in satisfaction of a decree by a third party, and purchased partly by plaintiff and partly by the mortgagee himself *Held*, on plaintiff's claim for redemption of the part of the mortgaged property

portionate to the relative value of the mortgaged properties. MAHTAB SINGH *v.* MISREE LALL [2 Agra, 88

392. ——————— *Purchase of portion of equity of redemption* —An entire mouzah had been mortgaged by way of usufructuary mortgage. The plaintiff subsequently purchased a four

precluded from suing on the ground that he claimed only a portion of the mortgaged property LALLA DABEE PERSHAD *v.* BEHAREE LALL 3 Agra, 33

393 ——————— *Suits heard together brought by co-sharers of whole estate.*—*A* granted a zur-i peshgi lease of certain lands to the defendants for a fixed term of years, which was to continue after the expiry of the term so long as the money advanced remained unpaid Shortly afterwards *A* evicted the defendants, and sold the land to *C* and *D* in the proportion of twelve annas and four annas The defendants sued all the three, and obtained a decree for possession and mesne profits. They never got back possession, but recovered the mesne profits from *A*. On the expiry of the term of the lease, *C* and *D* each brought a suit to redeem his own share of the estate after payment into Court of the money advanced, in amounts proportionate to the share of the land purchased by each. The two suits were heard together. *Held* they were entitled to redeem WUZUHOONNESSA *v.* SAEEDUN. JOYMUNGUL SINGH *v.* SAEEDUN

[B. L. R., Sup. Vol, 613: 6 W. R., 240

394. ——————— *Deposit of proportionate share of debt—Purchase of portion of equity of redemption by mortgagee*—*R* mortgaged to *N* certain property, of which *N* caused a moiety to be sold in execution of a money-decree against *R*, and himself became the purchaser. The moiety was

and *L* thereupon, with a view to stay the sale deposited an amount proportionate to the share held by him. The sale, however, was allowed to proceed. *Held* in a suit brought by *L* against *N* to set aside the sale, he was entitled to a decree. NATHOO SAHOO *v.* LALAH AMEER CHAND

[15 B. L. R., 303: 24 W. R., 24

395. ——————— *Equity of redemption, Attachment of—Payment of proportionate share of mortgage-debt.*—*A*, the holder of a decree upon a mortgage-bond, attached in execution a one third share of a certain mouzah, one of seventeen mouzahs included in the mortgage, and the equity of redemption in which one-third share had been purchased by *B* *Held* that although, as laid down in *Azimut Ali Khan* v. *Jowahir Sing, 13 Moore's I. A., 404*, *B* would have been at liberty to insist that his one third share should be burthened with no more than a proportionate amount of the original mortgage-debt, and might claim to redeem such share upon payment of that quota, yet, as he had not shown what that proportion was, nor paid it into Court, that *A* under the circumstances was entitled to enforce his attachment HIRDY NARAIN *v.* ATTAOOLLAH

[I. L. R., 4 Calc., 72: 2 C. L. R., 580

396. ——————— *Contribution—Suit for redemption of share of property sold in execution of decree for mortgage-debt.*—*M*, *B*, and *N* held mouzah D in equal one-third shares, and *M* also held a share in mouzah A. On the 3rd January 1863 *M* and *B* mortgaged their shares in mouzah D

of a decree for money against *M*, brought to sale his share in mouzah A and became its purchaser *Held*,

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

in a suit by N against R, in which he claimed that the sum due by him under the two mortgages dated the 15th March 1870, and the decree dated the 16th April

clared redeemed. *Held* that the sale of K's share in mouzah D could not be set aside *Held* also that, if it were shown that the sum realized by the sale of his one-third share in mouzah D exceeded the proportionate share of his liability on the two mortgages, he was

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debt.

[I. L. R., 2 All., 110

397. ——— *Sale of equity of redemption of two parcels—Second mortgage of six parcels and redemption of one by mortgagor—Transfer of Property Act, s. 60—Redemption by purchaser of two parcels on payment of proportionate amount of debt decreed.*—In 1873 R mortgaged to S seven parcels of land (items 1-7) for R300. In 1880 M purchased R's rights in items 1 and 2. In 1881 R redeemed item 5 on payment of R70, and executed a second mortgage of the rest to S for R200. *Held* that M was entitled to redeem items 1 and 2 on payment of a proportionate amount of the first mortgage-debt. SUBRAMANYAN *v.* MANDAYAN . . . I. L. R., 9 Mad., 453

398. ——— *Breaking up security—Mortgagee allowing mortgagor to pay a portion of the mortgage-debt and releasing part of*

property piecemeal. *Marana Ammanna* v. *Pendyala Perubotulu, I. L. R., 3 Mad., 230,* and *Subramanyan* v. *Mandayan, I. L. R., 9 Mad., 453,* not followed. LACHMI NARAIN *v.* MUHAMMAD YUSUF [I. L. R., 17 All., 63

399. ——— *Subsequent mortgage of same land—Decree on first mortgage—Effect of sale in execution of some of mortgaged*

gaged these same four fields with other lands to the defendants. In 1877 S obtained a decree upon

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

his mortgage, and in execution sold only Nos. 22, 23, and 41, which realized sufficient to satisfy his decree. These three fields were, on the application of the defendants, sold subject to their mortgage, and they themselves purchased them at the sale. The plaintiffs

mortgagees had themselves acquired the plaintiffs' (mortgagors') interest in the other part and so severed their claim under the mortgage. *Held* also that the plaintiffs were entitled to redeem on payment of such portion of the mortgage-debt as remained after deducting the portion of it to which the lands purchased by defendants were liable. PIRJADA AHMADMIYA PIRMAYA *v.* SHA KALIDAS KANJI

[I. L. R., 21 Bom., 544

400. ——— *Hindu law—Widow's estate—Mortgage by two co-widows—Sale of equity of redemption in execution of decree against one widow—Suit to redeem by other widow—Decree for redemption of moiety on payment of moiety of mortgage amount.*—A mortgage of ancestral estate having been made by A and B, two Hindu co-widows, the equity of redemption of the said estate was sold in execution of a decree for money against B only and purchased by the mortgagee. *Held* that A was entitled to redeem only a moiety of the estate during the lifetime of B. ABIYAPUTRI *v.* ALAMELU I. L. R., 11 Mad., 304

401. ——— *Transfer of Property Act (IV of 1882), s. 60—Effect of purchase by mortgagee of portion of the mortgaged*

such purchase be made in execution of a simple decree *for money* or in execution of a *decree* obtained by the mortgagee himself upon a subsequent mortgage, although it is possible that under some circumstances such purchase may have the effect of extinguishing the mortgage. *Ahmad Wali* v. *Bakar Husain,*

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

402. ——————— *Purchase by third parties of mortgagee's interest in portions of mortgaged property—Redemption and apportionment of liability of purchasers for the mortgage charge—Joinder of parties—Mortgage account—*

[illegible]

ground that their claims to portions of the mortgaged property, under titles prior to, and independent of, the mortgagee's title, could not be decided therein. A decree was then made against the mortgagor, and on his subsequent failure to redeem or to pay the debt, his equity of redemption was sold, and was bought by the

[illegible]

cluded from afterwards claiming to redeem; and (*b*) the proportion of mortgage charge for which he was liable could not be apportioned by the taking an account as between him and the mortgagee alone, in the absence of the purchasers of the other portions *Azimut Ali Khan* v *Jowahir Singh, 13 Moore's I. A., 404*, referred to. A decree which ordered that the defendants, without any account being taken at all, should retain possession of the portion purchased as above stated, clear of the proportion of mortgage-debt chargeable thereon, on payment to the mortgagee of the sum for which he had bought the equity of redemption, was held to be incorrect, and was accordingly reversed NILKANT BANERJI *v.* SURESH CHANDRA MULLICK

[I. L. R., 12 Calc., 414 : L. R., 12 I. A., 171

403. ——————— *Right of one of several joint mortgagors to redeem the whole estate—Parties to a redemption suit.*—In the case of joint-family property, which, though held in certain shares by the several coparceners, is mortgaged as a whole and redeemable upon payment of the entire sum, each and every one of the mortgagors has a right to redeem the whole estate, seeking his contribution from the rest. The rule is the same as regards any persons, other than the original mortgagors, who have acquired any interest in the lands

[illegible]

decree against *R*, the eldest of the five sons of *S* and the other in execution of a decree against *H*. After the institution of the suit, the defendants purchased privately the shares in the equity of redemption belonging to Bala, the fifth son of *S*, and to Saya and Devji, two of the sons of Baba, the fourth son of *S*. Under these sales, they claimed to be owners of a four pies share in the takshim. Pending the appeal in the District Court, the defendants allowed *L*, the grandson of *P*, to redeem a two

[illegible]

was mortgaged as a whole and for an entire sum, the plaintiffs, as owners by purchase of a part of the equity of redemption, had a right to redeem the whole of the sixteen pies takshim; and this right could not be affected by the conduct of the defendants *post litem motam*, either by their purchase of a share in the equity of redemption pending the suit, or by the partial redemption allowed by them pending the appeal. *Held* also that the defendants had no power to permit partial redemption, as before partition none of the co-sharers could redeem any particular share NARO HARI BHAVE *v.* VITHALBHAT

[I. L. R., 10 Bom., 648

SAKHARAM NARAYAN *v* GOPAL LAKSHUMAN

[I. L. R., 10 Bom., 656 note

ALIKHAN DAUDKHAN *v.* MAHOMADKHAN SHAMSHERKHAN DESMUKH

[I. L. R., 10 Bom., 658 note

404. ——————— *Sale by mortgagor of part of mortgaged property pending redemption suit—Sale by mortgagor of rest of mortgaged property after decree for redemption—Application by purchasers for execution of decree—Subsequent suit for redemption by one purchaser—Sale pendente lite*—One *M* sued the defendant *R* for partition. The defendant pleaded a prior partition, and alleged that the property which *M* now sued to recover had been mortgaged by *M* to him (the defendant). Pending the suit, *M* sold to the

[illegible]

quently sold his interest to the mortgagee, *R*. In

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

1880 the plaintiff brought the present suit for redemption against *M* (the mortgagor) and the defendant *R* (the mortgagee), alleging (*inter alia*) that *M*, having sold the property, had not sought to execute the former decree for redemption. The defendant *R* in his written statement alleged that the sale by *M* to the plaintiff was fraudulent; that the plaintiff as purchaser from *M* had not applied to be made a party to the former suit, that *M* having failed to redeem as ordered by the said decree within the period specified, neither he nor the plaintiff was now entitled to sue *Held* that the plaintiff's suit was unsustainable By the sale to the plaintiff the rights of *M* came to the plaintiff subject to the result of the suit then pending in which he did not choose to get himself made a co-plaintiff. When the decree was passed, it was only through a right derived from *M* that the plaintiff could have a *locus standi* in the further proceedings, and he applied for execution as assignee, and therefore as representative of *M* under s. 244 of the Code of Civil Procedure (X of 1877) As such representative, he might have appealed, but did not, against the order of the 6th March 1880, passed on the application made by him jointly with *H S*. He had this right of appeal as representative of *M*, but he could not bring a fresh suit If he was not a representative of *M*, then he was a stranger to the proceedings under the decree; and as *M* took no steps to fulfil the decree, the right to redeem was foreclosed in six months from the date of the decree,—*i.e*, in May 1881. The plaintiff could not, by any step, prevent the right of the defendant

405. ———— *Right to redeem share coming to person by inheritance.*—The plaintiff recognized the validity of a mortgage for a term of twenty years of her deceased father's estate made in 1854 by her two brothers, nor did she dispute the sale in 1863, after the death of the brothers, of the estate to the mortgagees by *M*, her mother, describing herself as sole owner, as a transfer of *M's* rights. She claimed to have a right to redeem from the mortgage in 1854, in due course of time, the share in the estate which devolved upon her by right of inheritance from her father and brothers, the sale-deed of 1863 notwithstanding. The purchase-money under the sale-deed represented personal debts of *M* and *N*, one of the brothers. The plaintiff did not claim as an heir of *M*, whose death was not known for certain. *M* did not profess in the sale-deed to be acting for her daughter either as guardian or as one of *N's* heirs managing for them all The plaintiff was apparently not a minor at the time, and *M* was not an heir of *N*, being his step-mother. Under Mahomedan law, she could not have disposed of her daughter's

was unnecessary. Under these circumstances, the plaintiff's claim was decreed. IMAMAN *v.* LALTA BUKSH . . . . . . 7 N. W., 343

406. ———— *Redemption of a share of mortgaged property upon payment of proportionate debt—Parties—Transfer of Property Act (IV of 1882), s 60—Interest* —Where a suit was brought upon a mortgage against the original mortgagor, and upon the latter's death all his heirs were not brought on the record and in execution of the decree thus obtained the mortgaged property was sold.—*Held* that, in a suit by the heirs not on the record, they were entitled to redeem their share of the mortgaged property upon payment of a proportionate share of the mortgage-debt. SURYA BIBI *v.* MONINDRA NATH ROY . 4 C. W. N., 507

(c) REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM.

407. ———— Redemption after expiry of time—*Mortgage becoming absolute on default of redemption Security for repayment of loan.*—Where an instrument of mortgage, though in terms it transfers an estate on failure to repay the mortgage-

may in equity and good conscience redeem the property by paying off the principal debt and interest, though the stipulated time for payment has been allowed to pass by. RAMJI BIN TUKARAM *v.* CHINTO SAKHARAM . . . . . . 1 Bom., 199

MUHAMMAD VALAD ABDUL MULNA *v.* IBRAHIM VALAD HASAN . . . 3 Bom, A. C., 160

408.———— *Conditional sale —Dhristabandhaka* —A dhristabandhaka, or Hindu instrument by which visible property is mortgaged, which names a time for payment of the money borrowed, and stipulates that on default the mortgagee shall be put into exclusive possession and enjoyment of the property, will not be treated strictly as a conditional sale, even though the instrument expressly provides that on default the transaction shall be deemed an outright sale; and in a suit by the mortgagee for possession, the Court, in decreeing the right thereto will give the mortgagor a day for redeeming. VENKATA REDDI *v.* PARVATI AMMAL 1 Mad, 460

409. ———— *Mortgage for fixed term* —*R* mortgaged certain land to *A* in 1844, stipulating that, if he (*R*) failed to pay a moiety of the mortgage-money within three years or wholly redeem within five years from the date of the mortgage, the property mortgaged should be considered as

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

this time *R* did not raise any objection to the property being sold, although he was fully aware of the fact. *R* had also admitted, in a suit brought against him in 1850 by *A*, that he had sold the land to *A*. In a suit brought by *R* against *A* in 1867 to redeem the mortgaged property,—*Held* (following the decision in *Ramji bin Tukaram* v. *Chinto Sakharam, 1 Bom., 199*) that *R* was entitled to redeem the property. RAMSHET BACHASHET *v.* PANDHARINATH [8 Bom., A. C., 236

See KRISHNAJI *alias* BABAJI KESHAV *v* RAVJI SADASHIV . . . . . 9 Bom., 79

410. ———————— *Gahan lahan clause.*—Since the decision of the case of *Ramji bin Tukaram* v. *Chinto Sakharam, 1 Bom., 199*, it has been the practice of the High Court on its appellate side and of the inferior Courts in the Bombay Presi-

proved beneficial, and should be adhered to. *Ramji bin Tukaram* v. *Chinto Sakharam, 1 Ibid., 199*, and the cases decided in accordance with it, referred to and followed. SHANKARBHAI GULABBHAI *v.* KASSIBHAI VITHALBHAI . . 9 Bom., 69

411. ———————— *Mortgage with clause of conditional sale.*—The plaintiff sought to redeem two mortgages executed by his father in 1839 in favour of the defendant. The mortgages contained

[I. L. R., 14 Bom., 19

412. ———————— *Mortgage with clause of conditional sale—Gahan lahan—Merger*

gagee as purchaser thereof. In 1866 the defendant-

account was taken, allowing R240 as the consideration for the sale of the land under the conditional sale clause, and the claim was decreed accordingly. In 1884 the present suit was brought to redeem the mortgage. The defendant contended that under the conditional sale clause the mortgage did not subsist, and that the present suit was barred by the suit of 1866. The lower Courts held the plaintiff's claim to be too

force in the Presidency of Bombay with regard to mortgages containing clauses of conditional sale, whether executed before or after 1864. *Held* also that the mortgage had not merged in the decrees of 1866, which was in a suit to recover a different mortgage-debt secured by different property. It was contended that the understanding of the parties up to 1866 was that the mortgage had been converted into a sale, and that the property had passed to the defendant by purchase, and therefore the plaintiffs

413. ———————— *Agreement in a subsequent deed to postpone redemption until payment of another debt.*—An agreement contained in a deed executed for a fresh consideration subsequent to a mortgage-deed to postpone redemption of the mortgage until the payment of another debt which has not been made a charge on the land is valid. KRISHNAJI *v.* MAHESHVAR LAKSHMAN GONDHALEKAR . . I. L. R., 20 Bom., 346

But *see* ABDUL HAK *v.* GULAM JILANI [I. L. R., 20 Bom., 677

and SABI *v.* MOTIRAM MAHADU . [I. L. R., 22 Bom., 375

414 ———————— *Conditional sale*—A mortgagor stipulated by an instrument in writing that if he failed to repay the sum lent on mortgage within three years, the property mortgaged was to be held an absolute sale. *Held* that the mortgagor was entitled to redeem, although the amount lent had not been repaid within three years. NALLAVA GAUNDAN *v.* PALANI GAUNDAN . 2 Mad., 420

415. ———————— *Usufructuary mortgage.*—The plaintiff executed an usufructuary mortgage of certain land for a term of twenty-two years to the first defendant, for the considerations stated in a written instrument of mortgage, dated the 21st of January 1863. The mortgage instrument contained a stipulation that possession should be given to the plaintiff upon his paying the principal and interest due to the first defendant within two months from the date of the execution. *Held* that

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

the plaintiff was entitled to redeem, although the amount of principal and interest had not been paid or tendered within two months. DORAPPA *v.* KUNDIKURI MALLIKARJUNUDU . . 3 Mad., 363

416. ——————— *English law—Construction.* — The decisions of the Sudder Court at Madras carried the doctrine of relief after the time named in the conveyance so far as to say that wherever the security for money is an object of the transaction, no sale can become absolute. The High Court have followed the English rule, and have held the question one of construction — admitting, however, for the purpose of the construction, other documents and oral evidence. LAKSHMI CHELLIAH GARU *v.* SRIKRISHNA BHUPATI DEVU MAHARAJ GARU, ZAMINDAR OF MADUGULU . 7 Mad., 6

417. ——————— *Power of sale by mortgagor—Reasonable time—Suit to remove attachment.*—Claim by a mortgagee to remove an attachment, placed by a judgment-creditor of the mortgagor, on the ground that the entire ownership of the property had passed to him at the date of attachment. The mortgagee had never had possession of the mortgaged property; and by the stipulations of the deed the mortgagor had a power of sale after the expiration of the time fixed for the payment of the debt, and it was only on the failure to exercise this power that the proprietary title would pass to the mortgagee. *Held* that, under a condition of this character, a reasonable time must be allowed for the exercise of the *power of sale, and* that the fact that no sale had taken place within an interval of twenty three days from the date fixed for payment could not equitably be held to divest the mortgagor of the equity of redemption; that consequently at the time of attachment the defendant was only a mortgagee, and the suit to remove the attachment could not be maintained KONER MANOHAR MAHAJAN AMBEKAR *v.* NARO HARI DASPUTRE [1 Bom., 167

418. ——— Redemption before expiry of time—*Suit for redemption of zur-i-peshgi mortgage.*—A mortgagor who has granted a zur-i-peshgi lease can sue to recover possession of his lands before the expiry of the term fixed by the lease, on the ground that the mortgage-debt has been satisfied by the mortgagee's receipts while in possession. PUNJUM SINGH *v.* AMEENA KHATOON [6 W. R., 6

419. ——————— *Mortgagor entitled to redeem before expiration of term unless mortgagee can show that the term binds mortgagor —Usufructuary mortgage.*—No such general rule of law exists in India as would preclude a mortgagor from redeeming a mortgage before the expiry of the term for which the mortgage was intended to be made unless the mortgagee succeeds in showing that by reason of the terms of the mortgage itself, the mortgagor is precluded from paying off the debt due by him to the mortgagee. Where parties agree that possession of any property shall be transferred to a mortgagee by way of security and repayment of the loan for a certain term, it may be inferred that they intended that redemption should be postponed until the end of the term, though the creation of a term is by no means conclusive on the point. The term fixed for payment of a debt should be presumed to be a protection only for the debtor till a contrary intention is shown. BHAGWAT DAS *v.* PARSHAD SING . . I. L. R., 10 All., 602

420. ——————— *Transfer of Property Act, ss. 60, 62 (a)—Mortgage with possession—Time for redemption of mortgage—Provision for discharge of debt out of income.*—In 1885 [illegible]

SAMBANDHA PANDARA SANNADHI *v.* NALLATAMBI [I. L. R., 16 Mad., 486

421. ——————— *Mortgage for fixed period—Act XXVIII of 1855.*—*Held* that a mortgage effected for a fixed period subsequent to Act XXVIII of 1855 coming into operation, is not redeemable until the period for which it was effected has expired, and that under the circumstances the mortgagor's remedy was to sue for the balance of the mortgage-loan which had not been paid to them. MUN PEARY *v.* SHIVA DEEN . . 1 Agra, 91

422. ——————— *Hindu and English law.*—The same principle exists both in the English and the Hindu law that the right of the mortgagor to redeem does not, in the absence of any circumstances or language indicating a contrary intention, arise any sooner than the right of the mortgagee to foreclose, and therefore a suit for redemption of a Hindu mortgage cannot be brought before the time fixed by the mortgage for the payment [illegible]

423 ——————— *Cause of action —Mortgage for fixed term.*—The general principle as to redemption and foreclosure is that, in the absence of any stipulation, express or implied, to the contrary, the right to redeem and the right to foreclose are co-extensive. A mortgage-deed, dated the 30th April 1870, stipulated that the mortgagor would pay the debt, with interest, within ten years and redeem the mortgaged property. In a suit instituted on the 30th July 1877 for the redemption of the property the mortgagee contended that the time ha

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

not expired. *Held* that the suit was unsustainable, because prematurely instituted, the mere use of the word "within" not being a sufficient indication of the intention of the parties that the mortgagor might redeem in a less period than ten years. VADJU v. VADJU . . . I. L. R., 5 Bom., 22

424. ———————— *Transfer of Property Act (IV of 1882), ss. 60, 62—Mortgage containing covenant to repay "within" a given time—Mortgagee's right to foreclose.*—Certain premises were mortgaged with possession in 1896, the mortgagor, in the instrument of mortgage, covenanting to repay the mortgage-money "within 20th of April 1904." In 1898 the mortgagor sold the mortgaged premises, and called upon the mortgagee to receive the principal and interest due and to deliver up possession. On the mortgagee refusing on the ground that the mortgage was not redeemable till 1904,—*Held* that the mortgagor was entitled to redeem. A stipulation for the postponement of payment of mortgage-money is *primâ facie* intended for the benefit of the mortgagor; the parties to an instrument of mortgage may, however, by the language of their contract, show their intention that

redeeming, reserved the liberty to redeem at pleasure. *Vadju v. Vadju, I. L. R., 5 Bom., 22,* and *Tiruqnana Sambandha Pandara Sannadhi v. Nallatambi, I. L. R., 16 Mad., 486,* considered. ROSE AMMAL v. RAJARATHNAM AMMAL [I. L. R., 23 Mad., 33

425. ———————— *Usufructuary mortgage.*—Plaintiff borrowed a sum of money for defendant, and executed what be called a "usufructuary mortgage," taking from defendant a lease of nine years, under which the lessee, after paying the

present suit was brought to redeem the property by payment of the principal and interest due, although the term of the lease had not expired. *Held* that the document leasing the property was partly "ticca" and partly "zur-i-peshgi," and the plaintiff was not entitled to enter into possession before the expiry of the term of the lease, nor could he then enter even if the transaction were viewed as a zur-i-peshgi. LOTF ALY v. GUJRAJ THAKOOR . . 11 W. R., 408

426. ———————— *Usufructuary mortgage—Suit for redemption on deposit of balance due.*—*A* executed an ikrar by way of mortgage, whereby it was stipulated that *B*, the mort-

a suit for redemption brought before the expiry of the period mentioned in the ikrar on deposit of the amount due thereunder,—*Held* that the suit would not lie. CHANDRA KUMAR BANERJEE v ISWUR CHANDRA NEWGI [6 B. L. R., 562: 14 W. R., 455

BUT *see* DINDOYAL SHAH v. GANESH MAHATUN [6 B. L. R., 56 note: 12 W. R., 528 note

which, however, was decided on the supposition that the mortgage was executed previously to Act XXVIII of 1855. SURJAN CHOWDHRY v. IMAMBANDI BEGUM . . 6 B. L. R., 566 note [12 W. R., 527

427. ———————— *Mortgage for fixed term.*—A mortgage-deed, which was executed in March 1858, provided for the redemption of the mortgaged property after the expiration of fifteen

reversal of the decree of the lower Court, that in 1867, when the suit was brought, the right even

428. ———————— *Mortgage for fixed term.*—Where money was lent on mortgage without a stipulated rate of interest, and it was mutually agreed that the mortgagee was to retain possession for a given period precisely calculated, the stipulation was held to involve a condition that the property was not to be taken out of the hands of the mortgagee before the expiration of that time. SREEMUNT DUTT v. KRISHNANATH ROY 25 W. R., 10

429. ———————— A mortgage-

tion of the mortgage-deed that the advance by the

ciprocal, and there was nothing in the terms of the deed to take it out of the ordinary rules applicable to documents of the kind; and that, while on the one hand the mortgagee could not enforce his rights during the period of ten years, on the other hand the mortgagor was not entitled, before that period had

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

expired, to redeem the property. *Vadja* v. *Vadju, I. L. R., 5 Bom., 22,* referred to. RAGHUBAR DAYAL v. BUDHU LAL . . I. L. R., 8 All., 95

430. ——— *Mortgage for a term—Intention of parties.*—When the continuance of the enjoyment of property mortgaged for a prescribed period forms a material part of the contract, the mortgagee cannot be deprived of his right to enjoyment on the mere ground that the contract is one of mortgage. The creation of a term is not conclusive evidence that redemption should not take place before the end of the term But where there was no agreement for payment of interest at an annual rate, but a lump sum equal to the principal was to be accepted as interest for the term, and a small balance of rent was to be paid at the end of the term when the land was returned, and, taking the net annual usufruct at a fixed sum, a term of years was created, during which the debt and interest were to be liquidated by that usufruct, the risk of seasons and payment of quit rent falling on the mortgagee,—*Held* that the basis of the contract was the enjoyment of the property by the mortgagee for the term fixed. SETRUCHERLA RAMABHADRA RAJU BAHADUR v. VAIRICHERLA SURIANARAYANA RAJU BAHADUR [I. L. R., 2 Mad., 314

431. ——— *Dekkan Agriculturists' Relief Act, XVII of 1879.*—The rule of law that the right to redeem is co-extensive with the right to foreclosure, and is consequently postponed until the time fixed for the payment of the mortgage-debt, does not apply to cases falling under the Dekkan Agriculturists' Relief Act. BABAJI v. VITHU [I. L. R., 6 Bom., 734

432. ——— Suit for redemption—*Question of title.*—In a suit for redemption the

433. ——— *Dekkan Agriculturists' Relief Act (XVII of 1879), ss. 15 (b) and 20—Instalment decree—Mortgagee in possession under the decree for a specified time—Right to redeem before the specified time.*—Where under a decree passed in a redemption suit brought under the provisions of the Dekkan Agriculturists' Relief Act (XVII of 1879) a mortgagee is conti-

mortgagor. RAMCHANDRA RAGHUNATH KULKARNI v. KONDAJI . . I. L. R., 23 Bom., 221

(d) MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE.

434. ——— Payment of mortgage-debt—*Tender or deposit of debt—Beng. Reg. XVII of 1806, s. 7.*—Under s. 7, Regulation XVII of 1806, if a mortgagee has obtained possession at any time before a final foreclosure of the mortgage, the mortgagor's payment or tender of the principal sum due

435. ——— *Tender of por-*

436. ——— *Tender by one of several mortgagors.*—A tender by one or more of several mortgagors is not such as a mortgagee is bound to accept, unless it is made conjointly by the whole of the mortgagors, or on their behalf and with their consent. RAMBAKSH SINGH v. RAM LALL DASS . . . . 21 W. R., 428

437. ——— *Deposit in*

mere fact of his having put in a petition, which refers to some other suit between him and the mortgagee, but does not prevent the latter from taking out the deposit, cannot deprive him. Where a mortgagor is liable for only a portion of the mortgaged property, but pays in the whole amount to secure himself against his co-sharers, he is entitled to wasilat for the whole. DABI DUTT SINGH v. GOBIND PERSHAD [25 W. R., 259

438. ——— *Time for payment—Year of grace.*—The year of grace counts from the date of issue of notice of application for foreclosure, and not from the date of service of the notice. GHAZEEOOD DEEN v. BHOOKUN DOOBEY [2 Agra, 301

439. ——— *Time for payment—Year of grace—Holiday—Beng. Reg. XVII of 1806.* The year of grace allowed to a mortgagor by Regulation XVII of 1806 to tender or deposit the amount due to the mortgagee includes authorized holidays, the mortgagor not being entitled to the deduction of any holidays which may occur when that year expires. KUMOLA KANT MYTEE v. NARAINEE DOSSEE . . . . . 9 W. R., 583

440. ——— *Time for payment—Beng. Reg. XVII of 1806, s. 8—Extension of time.*—A Judge has no discretion to extend the time allowed to a mortgagor under s. 8, Regulation XVII of 1806. MAHOMED GAZEE CHOWDHRY v. ABDOOL MAHOMED AMEEROODEEN [5 W. R., Mis., 31

441. ——— *Time for payment—Deposit Tender of mortgage money.*—

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

that the mortgagor saved his estate from foreclosure by depositing the money in Court on the first day after the 25th November on which the Court was open. The mortgagor having the option either of depositing the money in the Judge's Court or of tendering it if there is sufficient excuse for not depositing in the Judge's Court, he is not bound to tender the money and prove that tender. DARFE RAWOOT *v.* HYRAMUN MUHATOON . 8 W. R., 223

442. ——————— *Time for payment—Tender of mortgage-money—Notice of deposit to mortgagee.*—Where a decree declared plaintiffs' right to redeem a mortgage whenever within the

Jeth, but were found to see that the mortgagee in possession had due notice of such payment. NITIA NUND *v.* MYA RUN . . . 3 N. W., 80

443. ——————— *Right of purchaser to redeem usufructuary mortgage—Limitation.*—A zur i-peshgi lease, being nothing but a simple mortgage, may be cancelled on proof of discharge of the advance, with interest from the usufruct, or on payment of the money in cash. The purchaser

NUND LALL *v* BALUK . . 2 Agra, 122

444. ——————— *Deposit of mortgage-money—Tender—Notice of deposit.* A deposit of the mortgage money by a mortgagor, accompanied by a protest against the validity of the mortgage itself and a threat to sue for its cancelment, imposes no condition upon the acceptance of the money so as to render the tender invalid. A deposit being once

SINGH . . . . . 3 W. R., 184

445. ——————— *Suit by purchaser from mortgagor for redemption—Tender of mortgage-money.*—A purchaser of the right of redemption of a mortgagor may sue without tender out

446. ——————— *Tender of payment—Bye-bil-wafas—Foreclosure—Beng. Reg. III of 1793, s. 14, Beng Reg II of 1805, s 3, and Beng. Reg. XVII of 1806, s 8.*—Bye bil-wafas or kut-kobalas are redeemable like ordinary mortgages, and subject to foreclosure It cannot be laid down as a rule, universally true, that under s 14, Regulation III, 1793, a mortgagee's proceeding for a foreclosure under a mortgage of the class of bye-bil wafa simply cannot be preferred after twelve years from the expiration of the time which the instrument fixes as the period of redemption of payment, and on the expiration of which the conditional sale will

character, and would establish a bar arising from simple occupation, and not from the laches of the demandant or of others before him When a mortgagee not only seeks the assistance of a Court to give him possession of his pledge, but also to foreclose

may accompany a tender will not defeat it when they can reasonably be regarded as idle words. But the

S. C. PRANNATH ROY CHOWDRY *v.* ROOKEA BEGUM . . . . 7 Moore's I. A., 323

447. ——————— *Payment into Court of redemption-money—Costs—It is sufficient* to bar a foreclosure suit that the principal money and interest due on the mortgage have been paid into Court within the year of grace, or an extended time agreed upon by the parties without costs incurred by the mortgagor in the matter of the mortgage. ZALEM ROY *v.* DEB SHAHEE

[Marsh., 167 : 1 Hay, 373

448. ——————— *Beng. Reg. XVII of 1806, s 8—Mode of payment.*—The mort-

brought a suit, obtained a decree, and took possession. *Held* that, as the mortgagees took possession before final foreclosure, the mortgagors were in a position to redeem, and might do so by payment of the advance made on the mortgage, whether such payment was made in cash or realized by the mortgagees from the usufruct of the estate. ISHAN CHUNDER BANERJEE *v.* JUGGUT CHUNDER DOSS . . 13 W. R., 44

449. ——————— *Payment by order of Judge into Collector's treasury*—The payment by order of the Judge into the Collector's treasury, before the expiration of the year of grace, of a debt due to a mortgagee, was held to be a deposit

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

in Court entitling the borrower to redeem ABDOOL HUQ *v.* MYAH BEWAH . W. R., 1864, 184

450. ——————— *Acceptance of payment—Subsequent objection.*—A mortgagee who once takes the mortgage-money as deposited by the mortgagor within time cannot afterwards sue for possession, on the ground that the deposit was made after the expiry of the year of grace, and that he had applied for the money under wrong information from his agent. KHONDHAR NOWAZUSH HOSSEIN *v.* WOOSULOONISSA BIBEE . 6 W. R., 249

451. ——————— *Payment into Court of redemption-money—Legal tender.*—The defendant in a foreclosure suit paid into Court the amount due in respect of principal and interest of the mortgage. This payment was made after the day on which, according to the mortgage, the sale was to become absolute, but within a few days of the expiration of the year of grace. The payment into

S. C. GOLUCKMONEE DABEA *v.* NABUNGO MOONJUREE DABEA . W. R., F. B., 14

452. ——————— *Beng. Reg. XVII of 1806—Stipulated period—Notice.*—In a suit by a mortgagee for possession after foreclosure proceedings under Regulation XVII of 1806, on the ground that the mortgagor had failed to pay the money within one year from the notice, the defence was that the notice had been issued before the lapse of the time stipulated for repayment. The period stipulated for the payment of the principal sum was

with the period stipulated for the payment of the principal sum, *i.e.*, the 3rd July 1866. WOOMA CHURN CHOWDHRY *v.* BEHAREE LALL MOOKERJEE [21 W. R., 274

453. ——————— *Beng. Reg. XVII of 1806, ss. 7, 8—Tender of mortgage-money—Unconditional tender.*—Where, in a suit for foreclosure of a mortgage by conditional sale, a notice of foreclosure had been issued under Regulation XVII of 1806, and the mortgagors deposited in Court the money due on the mortgage before the expiry of the year of grace, but at the same time denied the mortgagee's right to receive the money, and threatened them with legal proceedings if they took it from the Court,—*Held* that the deposit was not an unconditional tender of the money due on the mortgage; that it was vitiated by the conditions under which it was made; that the mortgagees were not bound to accept a deposit so vitiated; and that therefore it was not valid to prevent foreclosure. *Prannath Roy Chowdhry v. Ram Rutton Rae, 7 Moore's I. A., 323,* and *Abdoor Ruhman v. Kisto Lall Ghose, B. L. R., Sup. Vol., 598,* followed. MAKHAN KUAR *v.* JASODA KUAR . . . I. L. R., 6 All., 399

454. ——————— *Mortgage prior to Beng. Reg. XVII of 1806—Beng. Reg. I of 1798.*—When the time fixed for payment of a mort-

[W. R., 1864, 183

455. ——————— *Deed without provision for interest—Payment only of principal money.*—When a deed of mortgage is silent as to interest, payment of the bare principal within the year of grace is sufficient to bar foreclosure. RADHANATH SEIN *v.* BUNGO CHUNDER SEIN [W. R., 1864, 157

456. ——————— *Payment of interest—Interest exceeding principal.*—*Held* that

KOOR . . . . . 2 Agra, Pt. II, 194

457. ——————— *Mortgage not providing for interest—Usufruct—Payment only of principal money.*—In an usufructuary mortgage, where there is no stipulation for interest, the mortgagee is not entitled to it, the usufruct going in lieu of interest, and the payment of only the principal sum is a bar to foreclosure. GUNGA PERSHAD ROY *v.* ENAYET ZAHERA . . 16 W. R., 251

458. ——————— *Payment within a year—Reg. XVII of 1806, s. 7—Interest.*—Where interest is not reserved by the mortgage-deed, but it provides for repayment of the principal only, a payment into Court within a year after the institution of a foreclosure suit of the principal only without interest satisfies the 7th section of Regulation XVII of 1806, and entitles the mortgagor to the redemption of the property. ROOPNARAIN SINGH *v.* MADHO SINGH . . . . . Marsh., 617

459. ——————— *Mortgage with*

remain in possession so long as the interest was regularly paid. Default in payment of the interest was made, and the mortgagee sued for possession of the mortgaged premises. *Held* that the mortgagor

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

gagor to make such payment. SITARAM DANDEKAR v. GANESH GOKHALE . 6 Bom., A. C., 121

460. ——— *Interest, Non-payment of—Right of assignee of mortgagee to foreclose in default of payment.*—Where the mortgagor covenanted to pay to the mortgagee the principal sum at a given date and interest in the meantime, and in default of payment of the principal on the date mentioned, interest on so much as should remain due at the same rate, the mortgagee covenanting to reconvey on payment on the given date, and in default of payment of principal or interest at their respective due dates the whole sum to become due,—*Held* that the assignee of the mortgagee had a right to foreclose on default of payment of an instalment of interest before the date on which the principal was made payable. PROSADDOSS DUTT v. RAMDHONE MULLICK . 1 Ind. Jur., N. S, 255

instalment of interest thereon," etc, "then and in any such case the whole of the money so secured by these presents shall immediately thereupon become due and payable with a power of sale on such default," and where the principal sum and interest thereon was also secured by a bond and warrant of attorney to confess judgment thereon, the condition of which was in the same words as the covenant for repayment in the mortgage,—*Held* that, in an action on the covenant contained in the proviso, and on the bond, brought on default of payment of an instalment of interest, but before the date on which the principal was payable, the plaintiff could only recover on either the covenant or the bond in respect of the interest unpaid. FOOL CHUND JOHURRY v RAMKRISTO BOSE . . 1 Ind. Jur., N. S., 425

462. ——— *Breach of condition in mortgage—Relief against forfeiture.*—In November 1873 *M* sued for the cancelment of a deed

ture of the mortgage No payments of annuity had

463. ——— *Mortgage by conditional sale—Beng. Reg XVII of 1806, ss. 7, 8—Redemption*—In the part of India where Bengal Regulation XVII of 1806 is in force, the right to redeem a mortgage by conditional sale depends entirely upon it, whatever may be the true construction of the terms of the condition in regard to payment of interest Within a year after notifica-

prior years of the term had not been paid; but this,

clusive under s. 8, involving the dismissal of the mortgagor's suit for redemption MANSUR ALI KHAN v. SARJU PRASAD . I. L. R., 9 All., 20 [L. R., 13 I. A, 113

464. ——— *Conditional sale—Interest—Mesne profits—Foreclosure—Beng. Reg. XVII of 1806, s. 7.*—A deed of conditional sale, after reciting that the vendor had received

interest: in case the vendee does not obtain possession, he shall recover mesne profits for the period

by the vendee for possession of the property, the

465. ——— *Lease of mortgaged property by mortgagee to mortgagor—Intention of parties as to mode of payment and default—Remedies of mortgagee under mortgage.*—On the 16th March 1874 *L* gave *M* a mortgage on certain land for R24 000 for a term of ten years, by which it was provided, *inter alia*, that the mortgagee should

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

that in the first half of the second year the principal money had been deposited in Court, and that for the interest, for 10th years, decrees had been obtained by the mortgagee against him, before his suit was instituted. The above not showing payment or tender of the interest, of which payment was secured by the mortgage, an appeal was dismissed. HEWANCHAL SINGH v. JAWAHIR SINGH I. L. R., 16 Calc., 307

472. ———— *Decree for redemption without proviso for foreclosure or payment within a fixed time—Effect of not executing decree for redemption—Limitation.*—A decree for redemption which does not provide for payment of the mortgage-debt, within a fixed time, or for foreclosure in case of default, operates of itself as a foreclosure decree, if not executed within three years. On 12th November 1888 *A* obtained a decree for redemption on payment of a certain sum of money to *B* (the mortgagee). The decree contained no direction as to foreclosure, or as to the time within which the payment was to be made. On 26th November 1884, *B*, the mortgagee, sued to recover the mortgage-debt by sale of the property mortgaged. On 8th April 1885 *A* paid into Court the sum directed to be paid by the redemption decree. *B* refused to accept the payment, and insisted upon his right of sale. *Held* that no time having been fixed by the decree for redemption, *A* had three years within which to execute the decree; and as he had paid the money within the three years, *A* was entitled to recover the property. *Held* also that the decree for redemption would, if not executed within three years, operate as a foreclosure decree, and therefore effectually determine the rights under the mortgage both of the mortgagee and the mortgagor. MALOJI v. SAGAJI . . . I. L. R., 13 Bom., 567

473 ———— *Decree for redemption—Absence of clause as to time of payment or foreclosure—Execution of the decree after three years—Darkhasts presented from time to time—Limitation Act (XV of 1877), art 179.*—Where [illegible]

of the decree, execut[illegible] it by paying the mortgage- [illegible]

474. ———— *Decree directing payment of mortgagee's costs on a certain date, or, in default, foreclosure—Effect of such default—Enlargement of the time fixed for redemption.*—In a redemption suit the Court of first instance found that the mortgage-debt had already been paid off out of the rents of the mortgaged property, and it accordingly awarded possession to the plaintiff, directing that each party should bear his own costs. In execution of this decree, the mortgagor took possession of the property in dispute. On appeal by the mortgagee, the District Court amended the decree by directing the mortgagor to pay the mortgagee's costs of the suit by a certain day, or, in default, to stand for ever foreclosed. The mortgagor failed to [illegible] mortgagee [illegible] restored to [illegible] granted this [illegible] appeal, held [illegible] ery of the property by the mortgagor to the mortgagee. He, however, directed the mortgagor to pay the mortgagee's costs with interest. On appeal to the High Court,—*Held* that, as the mortgagee's costs, which became a part of the mortgage-debt, were not paid on the due date, the mortgagor was finally foreclosed, and the property thereupon passed to the mortgagee. It was therefore not competent to the Court, in execution, to practically enlarge the time for redemption, by allowing the mortgagor further time to pay the mortgagee's costs. SUBHANA v. KRISHNA . . . I. L. R., 15 Bom., 644

475. ———— *Decree for redemption—Absence of clause for foreclosure on non-payment in three months—Default in payment in time allowed.*—In a suit for redemption the mortgagors obtained a decree on 1st March 1886, whereby they were directed to pay the mortgagee the sum of R649 within three months, whereupon they were to get possession of the mortgaged property. The decree contained no clause for foreclosure in [illegible]

gagee was allowed to withdraw his appeal, and the [illegible]

decree. *Quære*—Whether, there being no foreclosure clause in the decree, the mortgagor could file another suit to redeem. CHUDASAMA MANABHAI MADARBANO v. ISHWARGAR BUDHAGAR [I. L. R., 16 Bom., 243

476. ———— *Decree for redemption on payment of a certain amount, and in default, mortgagee to recover possession—Suit for* [illegible]

in default the mortgagee to recover and retain possession until payment,—*Held* that a subsequent suit

MORTGAGE—*continued.*

8. REDEMPTION—*concluded.*

by the mortgagor against the mortgagee for an account and possession would not lie. The mortgagor could recover possession only on payment of the amount mentioned in the mortgage-decree. *Dattatraya Ravji v. Anaji Ramchandra, P. J., 1886, p. 237*, distinguished. RAMBHAT *v.* RAGHO KRISHNA DESHPANDE . I. L. R., 16 Bom., 656

TANI BAGAYAN *v.* HARI [I. L. R., 16 Bom., 659 note

477. ——— *Transfer of Property Act (IV of 1882), s. 93—Redemption decree—Time for and manner of redemption.*—In a suit on a kanom or usufructuary mortgage brought

mortgage premises were surrendered to the plaintiff. On appeal by the mortgagees against this order,—*Held* that the appeal should be dismissed on the

478. ——— *Decree for foreclosure giving future interest, Effect of, as charging mortgaged property—Transfer of Property Act (IV of 1882), s. 86—Civil Procedure Code, s. 209.*—Where in a decree for foreclosure

mortgage-money and interest up to date of decree, the decree-holder being at liberty to recover the future interest only from the judgment-debtor personally. BHAWANI PRASAD *v.* BRIJ LAL [I. L. R., 16 All., 269

See RAJ KUMAR *v.* BISHESHAR NATH [I. L. R., 16 All., 270

MORTGAGE—*continued.*

9. FORECLOSURE

(*a*) RIGHT OF FORECLOSURE

479. ——— Right in mortgage by con-

v. TIRUMALA CHARY . 2 Mad., 289

480. ——— *Forfeiture of*

481. ——— *Beng. Reg. XVII of 1806—Agreement of parties.*—*Held* that a conditional sale may, by agreement and acts of the parties, become absolute without formal foreclosure proceedings taken under Regulation XVII of 1806. GOORDYAL *v.* HUNSKOONWER . 2 Agra, 176

RUGHONATH DASS *v.* RAM GOPAL . 5 N. W., 29

482. ——— *Title of purchaser by conditional sale.*—The right of a purchaser by conditional sale, who has duly taken proceedings under Regulation XVII of 1806, becomes absolute on the expiry of the year of grace, and he is entitled to claim mesne profits from that date without bringing a suit for possession. JEORAKHUN SINGH *v.* HOOKUM SINGH . 3 Agra, 358

483. ——— *Beng. Reg.*

though he may not have obtained a decree establishing or declaring his right. *Khoob Chund v. Leela*

TAWAKKUL RAI *v.* LACHMAN RAI. TAWAKKUL RAI *v.* SHEO GHULAM RAI . I. L. R., 6 All., 344

484. ——— *Right at expiration of year of grace—Suit to confirm title.*—The title of a mortgagee is not complete upon the expiry of the year of grace allowed by the Regulation, but it is necessary for him to bring a regular suit and obtain a decree in order to confirm his title. [illegible]AISUDDIN CHOWDHRY *v.* KHODA NEWAZ CHOWDHRY [12 C. L. R., 479

485. ——— *Agreement to pay amount to co-sharer or in default to forfeit*

MORTGAGE—*continued.*

9. FORECLOSURE—*continued.*

become his absolute property,—*Held* that such an agreement amounted to a conditional sale, and was liable to the incidents which under the Regulations attach to such sales, and the suit for possession, without summary process of foreclosure, was not maintainable. GHOSEE LALL *v.* GAIND LALL

[3 Agra, 184

486.—————————— *Beng. Reg. XXXIV of 1802—Mahomedan mortgagor.*—In 1832 a Mahomedan mortgaged certain land with possession on condition that, if the money lent was not repaid within eight years, the land should be enjoyed by the mortgagee after that period as if conveyed by sale. In 1883 a suit was brought to redeem. *Held* that the title of the mortgagee became absolute by virtue of the terms of the contract on default of payment within the time specified. The obligation cast by Regulation XXXIV of 1802 upon a mortgagee to account for profits does not prevent a mortgage by way of conditional sale from becoming, after the period for redemption has elapsed, an absolute sale where no account has been rendered by the mortgagee. The rule laid down in *Pattabhiramier's case, 13 Moore's I. A., 560,* applies to a mortgage executed by a Mahomedan. MALLIKARJUNUDU *v.* MALLIKARJUNUDU

[I. L. R., 8 Mad., 185

487.—————————— *Parol conditional mortgage—Beng. Reg. XVII of 1806.—K* made over to *G*, from whom he had borrowed certain moneys, certain land, on the oral condition that, if such moneys were not repaid within two or three months, such land should become *G's* absolutely.

repaid to him. GOBAR DHAN DAS *v.* GOKAL DAS

[I. L. R., 2 All., 633

488.—————————— *Mortgage in English form.*—A mortgage in the English form between Hindus of lands in the mofussil, outside Calcutta, has always been treated by the Courts as a mortgage by conditional sale. SHURNOMOYEE DASI *v.* SRINATH DAS . I. L. R., 12 Calc., 614

489.—————————— *Beng. Reg. XVII of 1806, s. 7—Foreclosure of equity of redemption—"Stipulated period."*—By a mortgage in the English form, the defendants conveyed certain property to the plaintiff, subject to the proviso that, in the event of the defendants paying to the plaintiff the principal sum on the 4th September 1868, and in the meantime paying interest on that sum half-yearly, with annual rests, in case of default of such payment, then the plaintiff should re-convey the pro-

the establishment and confirmation of absolute purchase, and to obtain possession of the mortgaged premises. *Held* that the suit was not maintainable. Regulation XVII of 1806 applied to this mortgage; and, under that Regulation, the mortgagee could not apply for foreclosure until the time agreed upon for repayment by the mortgagor,—that is, the "stipulated period" referred to in s. 7;—and the mortgagor was entitled to one year's grace from notification of the application for foreclosure made after that date. SARASIBALA DEBI *v.* NAND LALL SEIN

[5 B. L. R., 389

S. C. SCHOROSHEE BALA DABEE *v.* NUND LAL SEN

[13 W. R., 384

490.—————————— *Beng. Reg. XVII of 1806, s. 8—Conditional sale.*—An instrument of conditional sale provided that the conditional vendor should retain possession of the property to which it related, paying interest on the principal sum lent annually at twelve per cent., and should repay the principal sum lent within seven years; that (by the fourth clause thereof), in the event of default of payment of interest in any year, the term of seven years should be cancelled, and the conditional sale should at once become absolute; and that (by the fifth clause thereof) in the event of the principal sum lent not being repaid at the end of seven years, the conditional sale should become absolute. Default having been made in the payment of interest annually as stipulated, the conditional vendee, the term of seven years not having expired, took proceedings to foreclose, in pursuance of the condition contained in the fourth clause of the deed, and the conditional sale was declared absolute. The conditional vendee then sued for possession of the property *Held* that the fifth clause of the deed did not dispense with the

clause of the deed in effect defeated and violated the provisions of that Regulation, and summarily converted a conditional into an absolute sale in disregard and defiance thereof, and the foreclosure proceedings taken by the conditional vendee before the expiry of the period stipulated for the repayment of

491.—————————— *Beng. Reg. XVII of 1806, s. 8—Stipulated period—Mortgage by conditional sale.*—The term "stipulated period," as used in s. 8 of Bengal Regulation XVII of 1806, means the full term on the expiry of which the mortgage-money is payable, notwithstanding that under the strict terms of the mortgage the mortgagee might

MORTGAGE—*continued.*

9. FORECLOSURE—*continued.*

be entitled to foreclose at an earlier period. *Sarasibala Debi v. Nand Lal Sen, 5 B. L. R., 389,* and *Imdad Husain v. Mansu Lal, I. L. R., 3 All., 509,* referred to. KUBRA BIBI *v.* WAJID KHAN [I. L. R., 16 All., 59

492. ——— *Beng. Reg. XVII of 1806, s. 8—Mortgage by conditional sale—Meaning of stipulated period—Petition for foreclosure prematurely filed—Continuance of right to redeem—Construction of clause accelerating payment.*—Under s. 8 of Bengal Regulation XVII of 1806, the right of the mortgagee by conditional sale to petition for foreclosure does not arise until the period stipulated in the proviso for redemption has expired. That period is not affected or altered by a contract in the deed of mortgage, making, without reference to redemption, the whole principal lent become due upon failure to pay interest at a certain time. In a mortgage by conditional sale in the English form, the proviso for redemption was that, on repayment of the principal lent, with interest, in three years from the date of the mortgage, the land should be reconveyed to the mortgagor. The deed also contained a coven-

8th section of the Regulation had not been called into operation, and the right to redeem remained.

493. ——— Rights of mortgagee—*Clause for recovery of mortgage-money before expiry of term.*—*M*, a Hindu widow, executed a deed of usufructuary mortgage in *J*'s favour the property hypothecated being the separate property of her husband in which she had only a life-interest. On *J* applying for mutation of names, *B* objected that he was in proprietary possession under a deed of gift executed by *M*, and the objection was allowed. In virtue of a clause in the deed of mortgage, that in case any demand was made in respect of the rest

property. *B*, in addition to an objection to the validity of the mortgage based on the deed of gift, pleaded that it was invalid as against him, the next reversioner, there being no legal necessity for the

enforce the mortgage-debt before the expiry of the term. BULAKI SINGH *v.* JAI KISHEN DAS [7 N. W., 203

494. ——— *Extension of term of grace after notice of foreclosure.*—A mort-

to be entitled to revert to the foreclosure proceedings before instituted. LALL DHUR RAE *v.* GUNPUT RAE [1 N. W., Ed. 1873, 81

495. ——— *Agreement between mortgagor and mortgagee—Breach by mortgagor—Right of mortgagee to fall back on mortgage rights.*—The mortgagee of certain shares of

the matter of the mortgage. It was agreed by the mortgagor to transfer by sale to the mortgagee the shares of three of the villages in lieu of the mortgage-money, and that he should not assert his rights under s. 7 of Act XVIII of 1873, as ex-proprietor, to retain the *sir* lands appertaining to such shares. The mortgagee agreed to relinquish his claim on the re-

mortgagee sued the mortgagor for possession of all the shares by virtue of the foreclosure proceedings. *Held*, following *Lal Dhur Rae v. Gunput Rae, 1 N. W., Ed. 1873, 81*, that on the failure of the mort-

496. ——— *Compromise during proceedings—Intention of parties.*—A mortgage-debt not having been paid off at due date, notice of foreclosure was issued and served. During the currency of the year of grace the parties came to an arrangement and filed petitions in Court in the foreclosure proceedings, setting forth that part payment

MORTGAGE—*continued*

9. FORECLOSURE—*continued.*

to substitute a new contract for the one under which the notice of foreclosure issued or that the proceedings should be allowed to drop. GOONOMONEE DOSSIA *v.* PARBUTTY DOSSIA . . . 10 W. R., 328

497. ——— *Usufructuary mortgage—Position of mortgagee in possession.*—Where, in proceedings held before the issue of Circular Order of 2nd July 1813, a mortgagor had the

mortgagees, and, though called upon, did not show that the mortgage was a bad one, but admitted that the mortgagees were not paid off, and that an extension of the year of grace had elapsed without his performing any of the conditions which would have saved the property from being foreclosed, it was held that, even if the proceedings did not possess the character of a regular suit, they were sufficient in themselves to effect a foreclosure, if such was their purpose. Where a party, originally a mortgagee out of possession, has been put into possession by the act

JEET NARAIN SINGH *v.* SHUREEFOONISSA [10 W. R., 478

498. ——— *Agreement for fresh consideration, between mortgagee and third person for release of property from mortgagee—*

of the property from liability under his mortgage. The e hy- pro- con- who

499. ——— *Effect of foreclosure—Purchaser from mortgagor.*—Foreclosure proceedings in the Supreme Court as to mofussil property, to which a purchaser from the mortgagor is not made a party, cannot affect that purchaser.

MORTGAGE—*continued.*

9. FORECLOSURE—*continued.*

BRAJANATH KUNDU CHOWDRY *v.* KHILAT CHUNDRA GHOSE . . . . 8 B. L. R., 104 [14 Moore's I. A., 144: 16 W. R., P. C., 33

S. C. in Court below. KHELUT CHUNDER GHOSE *v.* TARA CHAND KOONDOO CHOWDHRY . 6 W. R., 269

500. ——— *Foreclosure, Effect of—Deed of conditional sale.*—Until foreclosure, the vendee, under a bond of conditional sale, holds the lands, the subject of the bond, only as security for the money lent. *Semble*—The effect of foreclosure is to put an end to the original conditional sale and to make the property *ab initio* the immoveable property of the person who advanced the money. SHAM NARAIN SINGH *v.* ROGHOOBUR DYAL [I. L. R., 3 Calc., 508: 1 C. L. R., 343

501. ——— *Effect of foreclosure—Sale for arrears of revenue—Fraud of mortgagee—Act I of 1845.*—The effect of a foreclosure decree in the Supreme Court in a mortgage suit between Hindus is equivalent to a decree establishing proprietary right in the mofussil Courts, in similar suits on the like instruments. The mortgagee in possession and another having sought to

designedly incurred by the mortgagee in possession, it was held that a suit for redemption and for posses-

502. ——— *Usufructuary mortgage—Profits paying the interest—Suit by mortgagee to recover mortgage-money after time for redemption.*—Certain property was mortgaged for a

of the term, the mortgagee sued to recover the mort-

DYA RAM *v.* JWALA NATH . 5 N. W., Ap., 3

503. ——— *Suit for possession—Covenant to pay—Conditional sale—Damages Measure of—Costs.*—Two out of several co-sharers

MORTGAGE—*continued*

9. FORECLOSURE—*continued.*

mortgaged as their own, by way of conditional sale, a portion of the joint family property. The mortgagee foreclosed, and then instituted a suit for possession, which he withdrew with liberty to bring a fresh suit He afterwards brought a suit for pos-

In an action for damages brought by the mortgagee against his mortgagors,—*Held* that the plaintiff was entitled to recover the money lent and interest, and the costs of the second suit. BHUGWAN ACHARJEE *v.* GOBIND SAHOO

[I. L. R., 9 Calc., 234: 11 C L R., 355

504. ——— Partial foreclosure—*Foreclosure in respect of share of property.*—Where several parties have an interest in a mortgage, it is not competent for one of them to foreclose in respect of his fractional share. A party suing for possession of a share of mortgaged property (after its release has

505. ——— *Joint mortgagors—Foreclosure of portion of property—Suit for possession of portion of property after fore-*

gaged property, in virtue of the mortgage and foreclosure,—*Held* that the foreclosure was invalid and the suit was not maintainable. BISHAN DIAL *v.* MANNI RAM . . . I L. R., 1 All., 297

506. ——— *Joint mortgage by conditional sale of two villages—Sale of the equity of redemption—Foreclosure in respect of one village.*—*B* mortgaged by conditional sale two villages to *L* for a certain sum. He subsequently sold one village to *L* and the other to *S*. *L*, having foreclosed the mortgage in respect of the village sold to *S* for a proportionate amount of the mortgage-money,

507. ——— *Foreclosure of* ... mortgage of an ... tion in it ... share of ... t of any ... but the whole estate is made responsible for the mortgage-money, it is not competent for the mortgagee to treat a sum paid by one of the mortgagors as made on such mortgagor's own account in respect of what might be calculated as his reasonable share of the joint debt and to release his share from further liability. Where therefore in the case of such a mortgage the mortgagee, in taking foreclosure proceedings, exempted the person and share of the mort-

sures of such estate,—*Held* that the foreclosure proceedings being irregular, the suit was not maintainable. CHANDIKA SINGH *v.* PHOKAR SINGH

[I. L. R., 2 All., 906

508. ——— *Purchaser of share of mortgaged property.*—A mortgagee sold part of the mortgaged property and then foreclosed, his purchaser being no party to the foreclosure proceedings The mortgagee and purchaser afterwards sued for recovery of possession of the mortgaged property after foreclosure *Held* that the purchaser could maintain his suit, although he had not been a party to the foreclosure proceedings for the recovery of the mortgaged property, which had been purchased by him The foreclosure conferred an absolute title to the whole property mortgaged on the mortgagee and anybody claiming under him RAJ CHANDRA PODDER *v* MANORAMA

[3 B. L. R., Ap., 148: 12 W. R., 353

509. ——— *Merger—Fore-*

A, to secure a further advance of R24 000 made to

all the interest of *B* in both mortgages and after the expiration of the year of grace, filed, in the name of himself and *D*, a suit to declare his absolute right to the foreclosed properties, and afterwards filed another suit against *A* for a money-decree on the bond in the second mortgage. *Held* that *C*, being owner of portion of the property subject to both mortgages and as such liable to contribute proportionately to the payment of both, could not foreclose the first mortgage, and then sue *A* for the whole debt due upon the second. *Quære*—Whether it would be equitable for *C* to foreclose the first mortgage? *Held* further that the bringing of the second suit had the effect of re-opening the foreclosure proceedings, and that the Court could now make a decree in the whole case. KALIPROSONNO GHOSE *v* KAMINI SOONDURI CHOWDHRAIN

[I. L. R., 4 Calc., 475: 3 C. L. R., 184

MORTGAGE—*continued.*

9. FORECLOSURE—*continued.*

510. ——— *Second mortgage of the same property to the same person—Foreclosure decree on the first mortgage—Second suit on second mortgage—Practice—Foreclosure, Re-opening of.*—On the 8th August 1864 the defendant *B* mortgaged certain property to the plaintiff

the plaintiff sued in 1882 on his second mortgage, which fell due in 1878 The lower Courts allowed his claim. On appeal by the defendant to the High Court,—*Held,* reversing the decree of the Court below, that the plaintiff could not foreclose in 1877 so as to vest the property absolutely in himself without treating the entire mortgage-debt as satisfied. The defendant might have pleaded in 1877 that the plaintiff could not foreclose, unless he abandoned his claim to be repaid the second advance when due. His omission to do so could not deprive him of his right to insist that the foreclosure decree passed in 1878 either precluded the plaintiff from suing on the second debt, or that the foreclosure should be re-opened. BAPU RAVJI *v.* RAMJI SVARUPJI

[I. L. R., 11 Bom., 112

511. ——— **Foreclosure of property in two districts**—*Beng Reg. XVII of 1806, s 8.*—According to s 8, Regulation XVII of 1806, where mortgage-property is situate in two districts, an order of foreclosure relating to the whole property may be obtained in the Court of either district. RASMONEE DEBEA *v.* PRANKISHEN DAS

[7 W. R., P. C., 66

S. C. RAS MUNI DIBIAH *v.* PRAN KISHEN DAS

[4 Moore's I. A., 392

PROSONNO COOMAR ROY *v.* HARAN CHUNDER CHATTERJEE . . . . 5 C. L. R., 599

512. ——— **Foreclosure of property partly in Calcutta and partly in mofussil**—

which relates to the foreclosure of property in the mofussil; but it is bound to see that the defendant is not, by reason of the suit being brought in the High Court, deprived of any substantial advantage which he would have had if the suit had been instituted in the mofussil Court. BANK OF HINDUSTAN, CHINA, AND JAPAN *v.* NUNDOLOLL SEN

[11 B. L. R., 301

513. ——— **Foreclosure of property situated partly in Oudh and partly in the**

MORTGAGE—*continued.*

9. FORECLOSURE—*continued.*

circumstance that Oudh was in some respects a distinct province from the North-Western Provinces did not take the case out of the operation of that ruling, inasmuch as Regulation XVII of 1806 was in force in Oudh as well as in the North-Western Provinces at the time of the foreclosure proceedings. SURJAN SINGH *v.* JAGAN NATH SINGH

[I. L. R., 2 All., 313

(b) DEMAND AND NOTICE OF FORECLOSURE.

a condition precedent to the right to take foreclosure proceedings. GONESH CHUNDER PAL *v.* SHODANUND SURMA . . . I. L. R., 12 Calc., 138

515. ——— **Demand for payment of mortgage debt**—*Power of a minor to take a mortgage—Beng. Reg. XVII of 1806, s. 8.*—A conditional mortgagee applied for foreclosure omitting previously to demand from the mortgagor payment of the mortgage debt. On foreclosure of the mortgage, he sued for possession of the mortgaged property. The lower Appellate Court dismissed the suit on the ground that the foreclosure proceedings were invalid and ineffective by reason of such omission, and in so doing directed that the demand which the mortgagee should make prior to a fresh application for foreclosure should be limited to a certain amount. *Held* that the foreclosure proceedings were invalid and ineffective by reason of such omission and the suit had been properly dismissed;

516. ——— *Beng. Reg.*

ings altogether. *Lekhri Lal v. Beni Lal, I. L. R., 8 All., 408,* followed. KARAN SINGH *v.* MOHAN LAL . . . . I. L. R., 5 All., 9

517. ——— **Notice of foreclosure**—*Issue of notification—Beng. Reg. XVII of 180*

MORTGAGE—*continued.*

9. FORECLOSURE—*continued.*

ss. 7 and 8.—A mortgagee's "application" for foreclosure, as the term is used in s. 7, Regulation XVII of 1806, means the whole transaction contemplated in s. 8, ending with the notification to the mortgagor; thus the year of grace for payment, and the year necessary for completion of foreclosure, commence to run from the date of the notification. By the "date of the notification" is meant not the date on which it is served on the mortgagor, nor the date on which the purwannah or document of [illegible] rst issued [illegible] SUROOP [illegible] R., 116

518. ——————— *Beng. Reg. XVII of 1806—Form of notification to mortgagor,* [illegible] year from the date of notification, the mortgage will be finally foreclosed and the conditional sale will become conclusive. BHEEKUN KHAN *v.* BECHUN KHAN . . . . 3 N. W., 35

519. ——————— *Omission to give mortgagor copy of application to foreclose.*—A [illegible]

520. ——————— *Service of notice —On whom to be served* —The only person on whom effectual service of notice of foreclosure can be made is the person really interested in protecting the estate. KALEE KOOMAR DUTT *v.* PRAN KISHORE CHOWDHRAIN . . . . . 22 W. R., 168

521. ——————— *Right to notice —Beng Reg. XVII of 1806, s. 8—Purchaser of equity of redemption.* —The purchaser of the equity of redemption is not entitled to notice in a foreclosure suit especially if the purchase has not been made until after the institution of the suit GOOROOPERSAUD JANAH *v.* BIPPROPERSAUD BERRAH

[Marsh., 232; 2 Hay, 152

KURMOYOOL *v.* BISSESSUR SINGH Marsh., 337

S. C. BISSESSUR SINGH *v.* KURMOYOOL

[2 Hay, 408

See KISHEN BULLUBH MUHTA *v.* BELASOO COMMUR . . . . . 3 W. R., 230

Where, however, the Judges (BAYLEY and PHEAR, JJ.) differed, the former holding notice was not necessary.

See BISSONATH SINGH *v.* BROJONATH DOSS

[6 W. R., 230

522. ——————— *Right to notice —Purchaser from mortgagor.*—A purchaser from a mortgagor, as one of his legal representatives, is entitled to notice of foreclosure. MADHUB THAKOOR *v.* JHOONUCK LALL DOSS . 12 W. R., 105

MITTERJEET SINGH *v* MOOKH LALL SINGH

[25 W. R., 139

523. ——————— *Right to notice —Purchaser from mortgagor—Legal representative—Beng. Reg. XVII of 1806, s. 8.*—The purchaser [illegible] used after the sale; fresh notice to the purchaser would not be necessary if the sale took place after notice to the mortgagor. ACHUMBIT MISSER *v.* LALLA NUND RAM . . . 11 W. R., 544

524. ——————— *Right to notice—Transferees in possession.*—Transferees in possession are entitled to notice of foreclosure. TAZUN BIBEE *v.* SHIB CHUNDER DHUR 19 W. R., 170

525. ——————— *Assignee of mortgagor—Beng. Reg. XVII of 1806, s. 8—Legal representative* —A purchaser of the rights and interests of the mortgagor is a legal representative within s. 8, Regulation XVII of 1806, and notice of application for foreclosure must be served on him. GOLAM DUSTAGIR KHAN *v.* JOGAI SINGH

[1 B. L. R., S. N., 3: 10 W. R., 86

526. ——————— *Right to notice—Beng. Reg. XVII of 1806, s. 8—Conditional sale—Purchaser—Second mortgagee—Legal representative.*—Where land which has been conditionally sold [illegible] ortgagee, [illegible] " within [illegible] egulation [illegible] oceedings [illegible] he notice [illegible] rived by the conditional vendee of the possession of the land notwithstanding foreclosure, where no such notice has been given to him. DIRGAJ SINGH *v.* DEBI SINGH . . . I. L. R., 1 All., 499

527. ——————— *Right to notice —"Legal representative" of mortgagor—Beng. Reg. XVII of 1806, s. 8* —The holder of a decree for [illegible] ings. RADHEY TEWARI *v.* BUJHA MISR

[I. L. R., 3 All., 413

528. ——————— *Right to notice — Purchaser of mortgagor's interest* —Where a person mortgages his property by deed of conditional sale and afterwards the right, title, and interest of the mortgagor is sold in execution of a money-decree

MORTGAGE—*continued.*

9. FORECLOSURE—*continued.*

previously obtained against him, the purchaser at such sale is entitled to due notice of foreclosure proceedings instituted subsequently to the sale, but before the confirmation thereof. See *Bhyrub Chunder Bundopadhya v. Soudamini Dabee, I. L. R., 2 Calc., 141.* RAMESWAR NATH SINGH *v* MEWAR JUGJEET SINGH . . . I. L. R., 11 Calc., 341

529. ——— *Right to notice—Assignee of mortgagor—Beng Reg. XVII of 1806, s. 8.*—Under s. 8, Regulation XVII of 1806, a mortgagee is bound to serve notice of foreclosure upon the assignee of the mortgagor, whether such assignee be of the whole or a portion of the mortgage [illegible]

530. ——— *Right to notice—Assignee of mortgagor—Beng. Reg. XVII of 1806, s. 8.*—The assignee of a mortgagor, though purchaser of only a portion of the mortgaged property, is his "legal representative" within the meaning of s. 8, Regulation XVII of 1806, and as such entitled to notice of foreclosure. SHEO GOLAM SINGH *v.* RAMROOP SINGH

[15 B. L. R., 34 note: 23 W. R., 25

531 ——— *Right to redeem—Mokurraridar—Beng. Reg XVII of 1806, s. 8.*—The holder of a maurasi mokurari pottah under the [illegible] within the [illegible] 1806, and is [illegible] closure under [illegible] *Lalla Doorga Pershad* v. *Lalla Luchmun Sahoy, 17 W. R., 272,* followed. SRIPOTI CHURN DEY *v.* MOHIP NARAIN SINGH

[I. L. R., 9 Calc., 643: 13 C. L. R., 119

532. ——— *Beng. Reg. XVII of 1806.*—A second mortgagee under a mortgage-bond is entitled to notice of foreclosure under Regulation XVII of 1806. SUDYAR CHAND CHUCKERBUTTY *v.* ROOP DOSS BANERJEE

[22 W. R., 475

533. ——— *Right to notice—Second mortgagee—Prior foreclosure of a second mortgage—Legal representative—Beng. Reg. XVII of 1806, s. 8.*—In the case of the prior foreclosure of a subsequent mortgage,—*Quære*—Whether the second mortgagee is the mortgagor's legal representative for the purpose of the notice of foreclosure under s. 8, Regulation XVII of 1806. When the first mortgagee had no knowledge or cognizance of the second mortgage, or of the foreclosure proceedings taken under it, the second mortgage had no just ground of complaint that the notice of foreclosure was served, not on him, but on the mortgagor. KALEE KISHORE CHATTERJEE *v.* TARA PERSHAD ROY . . . . . . 4 W. R., 1

534. ——— *Right to notice—Purchaser from mortgagee.*—Property in the mofussil which had been mortgaged in 1862 to *C* by a deed in the English form containing the usual power of sale on default of payment, and again in 1864 to *T* by deed of conditional sale, was sold by *C* under the power of sale and purchased by *N*. Previously to the sale, *T* had foreclosed. In a suit for possession of the property brought by the widow of *T* against *N* and the mortgagor, it appeared that no notice of foreclosure had been served on *N*. *Held* that *N* was entitled to such notice by the fact of his purchase, whether he had obtained possession or not, [illegible]

MOHUN LALL SOOKUL *v* GOLUCK CHUNDER DUTT [1 W. R., P. C., 19: 10 Moore's I. A., 1

535. ——— *Sufficiency of notice—Foreclosure of share of mortgaged property.*—Two persons jointly held a mortgage, each having an equal share in it. The equity of redemption subsequently became vested solely in one of these persons. *Held* that, under the circumstances, a notice of foreclosure confined to a one-half share only of the mortgage (issued by the mortgagee, who had no interest in the equity of redemption) was sufficient, and that the foreclosure proceedings were not bad, although they related only to a part and not to the whole of the mortgaged property. HUNOOMANPERSAUD SAHOO *v.* KALEEPERSAUD SAHOO . . W. R., 1864, 285

536. ——— *Sufficiency of notice—Effect of service of second notice of foreclosure.*—Where the notice of foreclosure was duly served on the mortgagor, no subsequent transfer of the property, whether voluntary or involuntary, could affect the validity of the notice, or impose on the mortgagee any new obligation in the way of causing a fresh notice to be served on the purchaser. The notice having been duly served on the mortgagor, his right and interest were subsequently sold in execution, and the mortgagee caused a second notice to be served on the purchaser. The foreclosure took place after the expiry of a year from the first, but within a year from the date of second notice. [illegible]

537. ——— *Fresh notice—Allowance of time by mortgagee beyond year of grace.*—A mortgagee, having issued notice of foreclosure on the mortgagor, allowed him six months' time in which to redeem, shortly before the expiry of the year of grace. The mortgagor died, and the mortgagee sued to recover the property. *Held* that fresh notice of foreclosure on the legal representative of the mortgagor was not necessary, the requirements of the law in the issue of the notice and the expiry of the year of grace having been complied with. BAZLOOR RAHIM *v.* ABDULLAH

[3 B. L. R., S. N., 5: 10 W. R., 359

MORTGAGE—*continued.*

9. FORECLOSURE—*continued.*

538. ——— *Extension of time for payment—Fresh notice.*—Where a mort-

539. ——— *Service of notice—Proof of service—Beng. Reg. XVII of 1806—Duty of Judge.*—Under Regulation XVII of 1806, the Zillah Judge is judicially required to see it

of grace. ABBAS ALY *v.* NUND COOMAR GHOSE [7 W. R., 123

540. ——— *Service of notice*

541. ——— *Service of notice—Proof of service—Beng. Reg. XVII of 1806.*

AZUMOONISSA . . . W. R., 1864, 49

542. ——— *Service of notice—Proof of service.*—The regulation as to service of a notice of foreclosure does not provide for any mode of service in substitution for personal service, though in some cases it has been held that personal service is not absolutely necessary, but to justify resort to any other mode of service it must be shown that in spite of efforts made for that purpose the notice cannot for some reason be personally served. A copy of the report of the Nazir of the Civil Court, copies of the depositions of witnesses not taken in the

543. ——— *Service of notice—Mode of service.*—Where notice of foreclosure issues, and the serving officer finds that the mortgagor is not at home, it is sufficient if he affixes the notice on the door of the mortgagor's house, personal notice on the mortgagor not being essential. SOORJOO KANT BANERJEE *v.* KRISTO KISHORE PODDAR . . . . . 14 W. R., 423

544. ——— *Service of notice—Mode of service—Sufficiency of service—Beng.*

545. ——— *Service of notice—Mode of service—Beng. Reg. XVII of 1806—Minor.*—Regulation XVII of 1806 giving no special direction as to the person on whom notice of fore-

be deemed sufficient service. DABEE PERSHAD *v.* MAN KHAN . . . . . 2 N. W., 444

546. ——— *Service of notice*

W. R., P. C., 60

S. C. RAS MUNI DIBIAH *v.* PRANKISHEN DAS [4 Moore's I. A., 392

547. ——— *Service of notice—Sufficiency of service.*—It cannot be said that, if a notice of foreclosure addressed to a deceased mortgagor has reached the hands of his representatives,

MORTGAGE—*continued.*

9 FORECLOSURE—*continued.*

they have not had the notice nor that they were debarred from paying or were not required to pay the amount of the mortgage upon receiving that notice. RAM CHUNDER HALDER *v.* JONAB ALI KHAN [17 W. R., 230

548. ——— ——— ——— *Service of notice —Sufficiency of service*—Where the defendant

of foreclosure. TAZUN BIBEE *v.* SHIB CHUNDER DHUR . . . . . . 19 W. R., 170

549. ——— ——— *Service of notice —Proof of service—Suit by conditional vendee for possession.*—Where in a suit by a conditional vendee for possession after foreclosure service of notice is denied by the mortgagor or his representative, it is incumbent on the former to prove such service independently of the copy of the foreclosure proceedings. SOOKHMUN *v.* CHOORAMAN . . 1 Agra, 172

550. ——— ———*Service of notice —Fresh notice, Necessity of—Purchase from mortgagor after notice served.*—Where the mortgagor sells his equity of redemption after foreclosure proceedings had been applied for and notices duly served on him, it is not necessary for the mortgagee to issue fresh notice on the purchaser; the requirements of the Regulation are satisfied by the service of the notice on the person who at the time of service is entitled to redeem. JYRAM GIR *v.* KRISHAN KISHORE CHUND . . . 3 Agra, 307

551. ——— ——— *Service of notice—Proof of service—Beng. Reg. XVII of 1806,*

date of the purwannah, or the issuing of it by the Judge, but from the time of service. Where there are several mortgagors, and it is not sought to foreclose the individual shares of each as against each but to foreclose the whole estate as upon one mortgage, one debt, and one entire right against all, service of the notice upon some only of the mortgagors is insufficient to warrant the foreclosure of the whole

MORTGAGE—*continued.*

9. FORECLOSURE—*continued.*

estate or of any part of it. *Quære*—Whether there may not be cases of mortgages of separate shares, in which by proceedings properly framed foreclosure may take place in respect of some of such shares only. The mortgagee, when he seeks to foreclose, must discover and serve notice on those who are the then owners of the estate NORENDER NARAIN SINGH *v.* DWARKALAL MUNDUR . I. L. R., 3 Calc., 397 [1 C. L. R., 369: L. R., 5 I. A., 18

552. ——— ——— *Sufficiency of notice—Reg. XVII of 1806, s. 8—Service of copy of petition and of purwannah.*—The provisions of s. 8 of Regulation XVII of 1806 are not merely directory, but imperative, prescribing conditions precedent to the right of the mortgagee to enforce forfeiture of the estate of the mortgagor, and have for their object the protection of mortgagors from fraud The prescribed procedure must be strictly followed. *Norender*

553. ——— ——— *Beng. Reg. XVII of 1806, s. 8—Procedure—Mortgage by conditional sale—Demand of payment—Purwannah —"Official signature"*—In proceedings for foreclosure of a mortgage under Bengal Regulation XVII of 1806, it is not necessary that the fact that a demand for payment was made before the petition for foreclosure was presented should appear on the face of the proceedings, it is sufficient if the plaintiff in his suit for possession shows that the demand was so made. A purwannah issued under the provisions of s 8 of the abovementioned Regulation is not signed as required by that section with the "official signature" of the

554. ——— ——— *Sufficiency of notice—Mortgage by conditional sale—Suit for possession of mortgaged property—Beng. Reg. XVII of 1806, s. 8—Conditions precedent—Demand for payment of mortgage-money—Proof of service of notice—Proof of notice being signed by the Judge—Proof of forwarding copy of application with notice—Transfer of Property Act (IV of 1882).*—The provisions as to the procedure to be followed in taking foreclosure proceedings under Regulation XVII of 1806 are not merely directory, but strict satisfaction of the prescribed conditions

MORTGAGE—*continued.*

9. FORECLOSURE—*continued.*

therein laid down precedes the right of the conditional vendee to claim the forfeiture of the conditional vendor's right, and the various requirements of that section have to be strictly observed in order

brought to their knowledge. *Held*, applying to the case the principles stated above, that the provisions of Regulation XVII of 1806 had not been satisfied, and that the plaintiff had not fulfilled his obligation, namely, to prove affirmatively that those provisions

SITLA BAKHSH *v.* LALTA PRASAD [I. L. R., 8 All., 388

555. ———— *Sufficiency of notice—Foreclosure proceedings under Reg. XVII of 1806, and subsequent procedure under Transfer of Property Act — Mortgage — Conditional sale — Suit for possession on foreclosure —Beng Reg. XVII of 1806, ss 7, 8 — Act IV of 1882 (Transfer of Property Act), ss. 2, cl (c), and 86.*—The procedure laid down in the Transfer of Property Act may be applied to the case of foreclosure of a mortgage executed before the Act came into operation, provided it be so applied as not to affect the rights saved by s 2, cl (c), of the Act. Where therefore under the provisions of Regulation XVII of 1806 notice of foreclosure had been served on a mortgagor by conditional sale, the mortgage having been executed, and the foreclosure proceedings taken before the Transfer of Property Act came into force, and after the expiry of the year of

notice had not been served upon him,—*Held* that it was competent to the Court to apply the procedure prescribed by the Transfer of Property Act and grant the mortgagee a decree in the terms of s 86, substituting the period of "one year" for the period of "six months" therein mentioned. *Ganga Sahai v. Kishen Sahai, I. L. R., 6 All., 622,* referred to. PERGASH KOER *v.* MAHABIR PERSHAD NARAIN SINGH . . I. L. R, 11 Calc., 582

556. ———— *Reg XVII of 1806, s. 8—Provision as to the year of grace—Extension of time by mutual agreement—Transfer of Property Act, s. 2, cl. (c).*—The year of grace allowed by s 8, Regulation XVII of 1806, is a matter of procedure, which it was open to the parties to extend by mutual agreement without prejudice to the proceedings already had under the section, and upon the expiration of such

had come to a close by the expiration of the stipulated period of extension while the Regulation was still in force, and the mortgagee brought his suit for possession in pursuance thereof after the passing of the Transfer of Property Act. *Held* that the

557. ———— *Conditional sale—Reg. XVII of 1806, s. 8—Transfer of Pro-*

caused a notice to be served on the mortgagor in com-

perty upon a suit being brought at the expiration of that year, and such right and liability came within the

MORTGAGE—*continued.*

9. FORECLOSURE—*continued.*

meaning of these terms as used in cl. (*c*), s. 2 of the Transfer of Property Act. MOHABIR PERSHAD NARAIN SINGH *v.* GUNGADHUR PERSHAD NARAIN SINGH [I. L. R., 14 Calc., 599

558. ——— *Suit for foreclosure—Conditional sale—Reg. XVII of 1806, s. 8—Transfer of Property Act (IV of 1882), s 2—General Clauses Consolidation Act (I of 1868), s. 6*

the present case, the service of notice of foreclosure. UMESH CHUNDER DAS *v.* CHUNCHUN OJHA [I. L. R., 15 Calc., 357

559. ——— *Sufficiency of*

PUNCHUM SINGH *v.* MUNGLE SINGH [2 Agra, Pt. II, 207

560. ——— *Omission to give notice, Effect of.*—Omission to give notice to the mortgagor or his representative is sufficient to vitiate the whole of the foreclosure proceedings KHUKROO MISRAIN *v* JHOOMUCK LALL DASS [15 W. R., 263

561. ——— *Irregularity in foreclosure proceedings—Beng. Reg. XVII of 1806, s 8*—The omission of the Court to send with a notice of foreclosure a copy of the mortgagee's petition as required by s. 8, Regulation XVII of 1806, was held to be not such an irregularity as made void the foreclosure in a case where, subsequent to the

562. ——— *Beng. Reg. XVII of 1806, s. 7—Notice of foreclosure not signed by Judge—Invalidity of foreclosure proceedings.*—A notice issued under Regulation XVII of

[I. L. R., 4 All., 276

MORTGAGE—*continued.*

9. FORECLOSURE—*concluded.*

563. ——— *Form of notice*

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notice be given under the seal and official signature of the Judge. SEITH HUR LALL *v.* MANICKPAL [3 N. W., 176

564. ——— *Beng. Reg. XVII of 1806.*—A notice of foreclosure signed by the

565. ——— *Sufficiency of notice—Beng. Reg. XVII of 1806, s. 8—Notice not signed by Judge.*—*Held* that, where the notice of foreclosure under s. 8 of Regulation XVII of 1806 was signed not by the Judge, but only by the Munsarim, the foreclosure proceedings were void *ab initio*. *Held* also that the notice which was upon the record of the foreclosure proceedings and bore the mortgagor's signature must be regarded as the *original notice in the matter; and that the acknowledgment* of receipt of notice by the mortgagor did not cure the inherent defect of its non-signature by the Judge. HANUMAN SARAN SINGH *v.* BHAIRON SINGH . . . . I. L. R., 12 All., 189

10. ACCOUNTS.

566. ——— **Claim for account**—*Suit on mortgage payable on demand.*—Where a mortgage-debt is payable on demand, the mortgagee ought to sue, not for interest only, but for an account and payment of what remains due on the mortgage for principal and interest up to the filing of the plaint. ANNAPA *v.* GANPATI . . I. L. R., 5 Bom., 181

567. ——— **Suit for account**—*Suit by mortgagor—Redemption.*—Ordinarily, a suit for an account upon a mortgage cannot be maintained by a mortgagor unless he asks for redemption also HARI *v.* LAKSHMAN. . . . I. L. R., 5 Bom., 614

See SHANKARAPA *v.* DANAPA [I. L. R., 5 Bom., 604

568. ——— **Obligation to account**—*Mortgagee in possession.*—Though a mortgage be not an usufructuary mortgage, the mortgagee in possession is bound to give an account of the profits realized by him from the mortgaged property so long as it was in his possession, whether he took possession with or without the consent of the mortgagor. NILKANT SEIN *v.* JAENOODDEEN . . 7 W. R., 30

569. ——— **Mode of taking account**—*Beng. Reg. XV of 1793, s. 10.*—According to s. 10, Regulation XV of 1793, it is the duty of the Court to take an account of the receipts of the mortgagee in possession, and then to adjust the mortgage account

MORTGAGE—*continued.*

10 ACCOUNTS—*continued.*

of principal and interest. SHUMBOONATH ROY v. MONOWAR ALI . W. R., 1864, 109

570. ——— Form of account—*Mortgagee in possession.*—A mortgagee in possession should keep an account independent of the butwara accounts, which may be used as a test of the accuracy of the accounts filed by the parties. The mortgagee's account must be prepared by himself or by his own agent, and must comprise the gross receipts realized from the tenantry, and the account must be full and complete. RAM KISSEN SINGH v. KUNDUN LALL [W. R., 1864, 177

571. ——— *Suit by second mortgagee against mortgagor and third mortgagee.*—In a suit by a second mortgagee against his mortgagor and a third mortgagee, asking for an account and sale, the Court directed an account to be taken, not only of what was due to the plaintiff, but also of what was due to the third mortgagee. AUHINDRO BHOOSUN CHATTERJEE v. CHUNNOOLALL JOHURRY [I. L. R., 5 Calc., 101

572. ——— Liability to account—*Duty of mortgagee of share of estate.*—It is the duty of a mortgagee of a fractional share of an estate held in joint tenancy to see that he receives out of the estate all that the mortgagor ought to have received, not only that all assets are realized and brought to account, but that the expenses are regulated with care. ALI REZA v. TARASOONDEREE [2 W. R., 150

573. ——— *Mortgagee in constructive possession—Duty of mortgagee.*—*Held* that an usufructuary mortgagee in possession is

gagee's account to be taken, charging the mortgagee with the amount of the ordinary annual profits if received by him or his agent, but not so charging him if the profits were received by the agent of the mortgagor. JAFFREE BEGUM v. UJBEE BEGUM [3 Agra, 153

574. ——— *Waiver of right to account by mortgagor—Usury laws, Repeal of—Contract as to profits of estate.*—A mortgagor may give his usufructuary mortgagee the power to sue him personally, or to sell the land, or both, at any moment. Since the repeal of the usury laws a mortgagor and mortgagee may make what contract they please with reference to the profits of the mortgaged

575. ——— *Usufructuary mortgage—Redemption—Interest—Beng. Reg. XV of 1793, ss. 3, 4, 10, 11—Stat. 13 Geo. III, c. 63, s. 30—Act XXVIII of 1855, s. 7—Novation of contract—Recital of mortgage.*—*J*, the usufructuary mortgagee for R1,250 of certain land, of one-ninth of which the had purchased the equity of

instrument of mortgage it was provided that the

per cent. had been received out of the profits, and claimed an account. *N* set up as a defence that the provisions of that Regulation were not applicable, as after its repeal by Act XXVIII of 1855, the mortgagor had agreed not to claim an account. This agreement, he alleged, was contained in the wajib-ul-urz of 1871. *Held* that the wajib-ul-urz did not contain a new contract or ratification of the old contract of 1854 between the parties, but merely a recital of

krishna Singh, 2 *B. L. R.*, *P. C.*, 44, and *Badriprasad v. Murlidhar*, *I. L. R.*, 2 *All.*, 593, referred to. MAHTAB KUAR v. COLLECTOR OF SHAHJAHANPUR [I. L. R., 5 All., 419

576. ——— *Usufructuary mortgage—Reservation of huka jori.*—When a deed

See FUZLOOL RUHMAN v. ALI KUREEM [5 W. R., 163

577. ——— Right to an account—*Suit for redemption—Usufructuary mortgage.*—In a

the original agreement exempt the defendant from his liability to an account, and although the principal sum advanced is very small. DOORGA DABEE v. ISSUR CHUNDER CHATTERJEE . 10 W. R., 367

PUNJUM SINGH v. AMEENA KHATOOM . 6 W. R., 6

578. ——— *Right of purchaser for mortgagor to an account.*—The fact that a purchaser of the equity of redemption received a

MORTGAGE—*continued.*

10. ACCOUNTS—*continued.*

579. ——— *Right of mortgagor to call on mortgagee to file account—Beng. Reg. XV of 1793—Beng. Reg. I of 1798*—A mort-

force the defendant to file his accounts and swear to them according to the provisions of Regulation XV of 1793. TUFUZZOOL HOSSEIN v. MAHOMED HOSSEIN [2 Hay, 17

580. ——— Production of accounts—*Beng. Reg. XV of 1793, s 11.*—Under s 11 of Regulation XV of 1793, a mortgagee in possession is bound to produce the accounts of collection and disbursement, and to swear to them, and a plea of "no assets" will not exempt him from acting up to those requirements. BHEECHUCK SINGH v. LUTCHMINARAIN SINGH . . . . 1 Hay, 182

581. ——— *Beng Reg. I of 1798, s. 3.*—In a suit for foreclosure brought by a mortgagee under a bye-bil-wafa, or conditional bill of sale, it is not incumbent on the mortgagee to produce his accounts, the language of s. 3 of Regulation I of 1798 pointing to an adjustment of accounts in the event of accounting becoming necessary, in which case the lender is to account. FORBES v. AMEEROONISSA BEGUM

[1 Ind. Jur., N. S, 117: 5 W. R., P. C., 47
10 Moore's I. A., 340

582. ——— Objection to items in accounts—*Jamabandi papers—Beng. Reg. IX of*

CHOWDHREE . . . 3 Agra, 314

583. ——— Mode of filing accounts—*Conditional decree—Reconveyance, Power of Court for.*—In a suit for redemption of mortgaged property it was held (by BAYLEY, J.) that the law only requires that the mortgagee's account of receipts and disbursements shall be made out, filed in Court, and then sworn to as correct by the mortgagee. *Held* (by PHEAR, J.) that mortgagees are bound to exhibit the detailed items of all their actual receipts and disbursements to the time of accounting, verified by themselves, and accompanied by all vouchers. *Held* (by BAYLEY, J.) to be a rule of law which had been followed in practice, and which this Court must follow, that no redemption can be decreed in such a suit as long as there is any balance found due. *Held* (by PHEAR, J.) that plaintiff ought to obtain a decree for reconveyance on payment of the balance found to be due with interest and costs of suits within a time specified, and that the Court is not bound by the previous practice but has power to mould its decrees in such a way as to meet the exigencies of each case. MOKUND LALL SOOKUL v. GOLUCK CHUNDER DUTT . . 9 W. R., 572

MORTGAGE—*continued.*

10. ACCOUNTS—*continued.*

584. ——— Nature and form of account—*Beng. Reg. I of 1798, s. 3—Estate papers.*—In a suit for possession of mortgaged lands

and jumma-wasil-baki papers are not *per se* such an account within the meaning of s. 3, Regulation I of 1798, but may corroborate such account. GOLUCK CHUNDER DUTT v. MOHUN LALL SOOKUL

[5 W. R., 271

RAM LOCHUN PATUK v. KUNHYA LALL

[6 W. R., 84

585. ——— *Beng. Reg. XV of 1893, s. 11.*—To enable a Court to ascertain the amount received by the mortgagee whilst in possession, the mortgagee should file his jumma-wasil baki papers, and proceed generally in accordance with s. 11, Regulation XV of 1793. AMEEROODDEEN v. RAM CHUND SAHOO . . . 5 W. R., 63

586. ——— Proof of accounts—*Beng. Reg. XV of 1793, s. 11—Co-sharers. Nature of proof.*—Mortgagees in actual possession should, under

with the actual state of facts. Where one of the

587. ——— *Interest on sum due—Beng Reg. XV of 1793, s. 10.*—The assignee of the mortgagor's rights in certain properties, of which a zur-i-peshgi lease for twenty-four years ending in 1280 had been granted, sued for an account

to simple interest at 1[illegible] per cent. on the money found due. *Held* further that under s. 11 of the Regulation it was sufficient for the lessee to tender accounts showing the collections and disbursements and to swear to their correctness, and that it was not necessary in the first instance for him to put in the original accounts on which the accounts tendered were prepared. TARADUK HOSSAIN v. BENI SINGH

[13 C. L. R., 123

588. ——— *Decision on insufficient proof.*—The Zillah Courts, in coming to a conclusion as to the state of the mortgage accounts having proceeded, not upon proof of the actual collections which were or ought to have been made by the mortgagees, but upon materials which were in a

MORTGAGE—*continued.*

10. ACCOUNTS—*continued.*

great measure speculative and conjectural, their decision was set aside MOHUN LALL SOOKOOL v. GOLUCK CHUNDER DUTT

[1 W. R., P. C., 19: 10 Moore's I. A., 1

589. ———————— *Onus of proof—Income tax papers*.—Where the accounts of a mortgagee who has been in possession are being taken, his income-tax papers are inadmissible as evidence in his favour, though they may be used against him. It is the mortgagee's duty to keep regular accounts, and the onus lies in the first instance upon him. If he has not kept proper accounts the presumption will be against him, but this does not mean that all statements of the mortgagor against him must therefore be taken as true. GHOLAM NUZUF v. EMANUM

[9 W. R., 275

590. ———————— *Usufructuary mortgage—Mesne profits*.—In the case of an usufructuary mortgage executed prior to Act XXVIII of 1855, where the mortgagor sues for redemption on the ground that the usufruct had paid off the debt, and claims mesne profits on the allegation that the mortgagee in possession has already collected more than his legal dues, the mortgagee is bound to produce the accounts of actual collections made by him during his possession. On the failure of the mortgagee in this respect, the mortgagor is expected to adduce some proof to justify a decree in his favour for redemption, as well as for mesne profits. HASHUM ALI v. RAMDHAREE SINGH . 7 W. R., 82

591. ———— Mode of taking accounts —*Mortgagee in possession*.—As to the mode of taking accounts when the defendant is mortgagee in possession. HUNOOMAN PERSHAD PANDEY v. MUNDRAJ KOONWEREE

(18 W. R., 81 note: 6 Moore's I. A., 393

592. ———————— *Mortgagee in possession*.—Mode of taking account when the mortgagee was in possession of the estates as mortgagee, and also as lessee under a lease. HUNOOMAN PERSAUD PANDAY v. MUNRAJ KOONWEREE

[6 Moore's I. A., 393
18 W. R., 81 note

593. ———————— *Arrangement by some of the mortgagors and the mortgagee*.—Where a mortgagee comes to an arrangement with three out of five joint mortgagors by which he consents to take as payment a money-decree against three of them, the amount of the decree must, in taking an account of what is due on the mortgage, be considered as a sum paid in reduction of the liability of the five. RAM KANTH ROY CHOWDHRY v. KALEE MOHUN MOOKERJEE . . . . . 22 W. R., 310

594. ———————— *Mortgage-debt —Apportionment by mortgagors—Mortgagee's acquiescence—Liability according to shares*.—Mortgagor co-sharers having, after the mortgage transaction, effected division among themselves and apportioned the mortgage-debt according ... mortgagee, ... ot bound to recognize the arrangement made by the mortgagors among themselves, still as he appropriated the amounts paid by some of the mortgagors in paying off their respective shares of the mortgage-debt without there being a special direction to that effect from those mortgagors, he was entitled to recover the remainder of that debt from the share of the mortgagor co-sharer by whom it was due. MAHADAJI HARI LIMAYE v. GANPATSHET LHONDSHET . . . . I. L. R., 15 Bom., 257

595. ———————— *Government revenue—Annual rests—Surplus receipts—Wrongful payments by mortgagee—Transfer of Property Act, IV of 1882, s. 76 (c) and (h)*.—By the terms of an usufructuary mortgage it was provided that the annual profits of the mortgaged property should be taken to be a certain amount; that out of this amount the revenue should be paid annually by the mortgagee; that the balance should be taken by the mortgagee as representing interest on the principal amount of the mortgage-money; and that the mortgage should be redeemed on payment of the principal of the mortgage-money in a lump sum. It was further provided that the mortgagor should not be entitled to claim mesne profits nor the mortgagee to claim interest. *J*, alleging that he had purchased the equity of redemption of the mortgaged property in 1869, that since the purchase the mortgagee had not paid any revenue, and therefore he, *J*, had been compelled to pay it; and that consequently the mortgage money had been paid out of the profits of the mortgaged property and a surplus was due,—sued the original mortgagor and the mortgagee for possession by redemption of the mortgaged property and for surplus profits, or for possession of the mortgaged property on payment of any sum which might be found due. One of the defences to the suit was that the mortgage had already been redeemed in 1877 by the original mortgagor, and the suit was ... maintainable. *Held* (i) that, assuming ... that fact could ... the mortgagor ... ption might be as between the ... the mortgagee, and such redemption was therefore not a bar to the suit; (ii) that the plaintiff was entitled to take into account the amount of revenue which he had been compelled to pay by reason of the mortgagee's default; (iii) that in the accounting the plaintiff was entitled to avail himself of annual rests; and (iv) that the mortgagee having had notice of the plaintiff's purchase, any payments which he might have made to the original mortgagor on account of revenue after the purchase were improperly made, and could not be taken into account against the plaintiff. JALLIT RAI v. GOBIND TIWARI

[I. L. R., 6 All., 303

596. ———————— *Civil Procedure Code, s. 111—Transfer of Property Act (IV of 1882), ss. 2, 76—Set-off—Waste by mortgagee in possession—Possession after date fixed for payment—Interest*.—In a suit in 1883 to recover

MORTGAGE—*continued.*

10. ACCOUNTS—*continued.*

principal and interest due on a usufructuary mortgage executed on 15th June 1870, which contained a covenant for repayment of the secured debt on 5th June 1878, the defendant pleaded and proved that the mortgagee had permitted certain buildings on the mortgage premises to fall into a ruinous condition, and it appeared that the mortgagee had remained in possession after June 1878,—*Held* (1) that the defendant was entitled to have the amount of the loss occasioned by the plaintiff's failure to make repairs brought into the mortgage account under the Transfer of Property Act, s 76, and a separate suit by him for that amount was not necessary; (2) that the profits derived by the mortgagee after the date fixed for repayment should be regarded as having been enjoyed in lieu of interest. SHIVA DEVI *v.* JARU HEGGADE I. L. R., 15 Mad., 290

597. ———————— *Equity of redemption—Charge created by mortgagors—Power of executors—Property subject to a trust.*—*R* died leaving a will, under which he gave certain legacies and left the remainder of his property to two sons, *A* and *P*, whom he appointed executors. *P* died leaving his brother *A* and his widows executors to his will, under which his adopted sons, *M* and *S*, became entitled to his property. In consequence of some alleged mismanagement on the part of *A*, *M* and *S* filed a bill in the late Supreme Court and obtained a decree ordering the master of the Court to take an account of the rents and profits which had come into the hands of *P*'s executors.

suit in equity was revived against his executors. The said executors borrowed money from one Mackintosh on

costs, or expenses. After this a decree in the above suit was made against *A*'s executors for R1,32,000, and this not being paid a writ of *fieri facias* was issued under which the Sheriff sold to *M* (benami) the equity of redemption in the Tumlook property subject to Mackintosh's mortgage. The latter then obtained a decree of foreclosure and commenced another suit against *M* which was compromised, and a decree made by consent in favour of Mackintosh, who then sold his interest in the mortgaged property to *M*. Under

asset of *A*'s estate. *Held* that *M* was bound to hold the property on the same terms as those on which he acquired it, *viz.*, that it was subject to a trust in his own favour for the payment of his own debt. MANOMATHO NATH DEY *v.* GREENDER CHUNDER GHOSE . . . . . 24 W. R., 366

598. ———————— *Suit for possession of property mortgaged by zur-i-peshgi—Form of suit.*—Directions as to the nature of accounts to be taken in a suit for possession of property the subject of a zur-i-peshgi mortgage, and as to the form of suit of such a case. SUYEEDUN *v.* ZUHOOR HOSSEIN [W. R., 1864, 44

599. ———————— *Interest—Beng Reg. XV of 1793, s. 10—Suit for redemption.*—Where a mortgage-deed stipulates for interest at 9 per cent., but other and collateral deeds, forming part of the same transaction, provide for further profits to the mortgagee,—*Held* that the mortgagor cannot, unless there be a positive legal enactment to that effect, be heard to plead that the written

from the consequences of his actual contract. The

knowledge of them. Presumptions against mortgagees for non production of accounts must have reasonable limits, and not be mere conjectures or based on inexact data. MAKHANLAL *v.* SRIKRISHNA SINGH [2 B. L. R., P. C., 44 : 11 W. R., P. C., 19 [12 Moore's I. A., 157

600. ———————— *Suit for redemption against mortgagee in possession—Account—Evidence.*—In a mortgage suit, where the defendant admitted that he was in possession of the property in dispute as a mortgagee under the plaintiff, but refused to put in evidence the mortgage deed, which was insufficiently stamped,—*Held* that the plaintiff was entitled to redeem, on paying what was due from him on the mortgage, together with the costs

...fused to pay ...n evidence, ...it with the the amount with the (mortgagee) account on

MORTGAGE—*continued.*

10. ACCOUNTS—*continued.*

a mortgage, it lies upon the mortgagee to prove what is due from the mortgagor in respect of principal and interest. GANGA MULIK *v* BAYAJI

[I. L. R., 6 Bom., 669

601. ——— *Confiscation of mortgagee's rights—Suit for redemption—Account.* —A mortgagee's rights, being confiscated by Government for rebellion, were given to defendants *Held,* on plaintiff's claim of redemption, that the defendants must account for excess of profits over interest in the years when they were in possession. MAHOMED SALAMUT HOSSEIN *v.* SOOKH DAYEE

[2 Agra, 116

602. ——— *Decree in mortgage suit giving mortgagee possession in default of payment of mortgage-debt—Relation between mortgagor and mortgagee—Mortgagee in possession under decree—Decree for possession in mortgage suit, Effect of.*—The plaintiff mortgaged certain land to the defendant in 1864. In 1874 the defendant (mortgagee) obtained a decree against the plaintiff upon the mortgage, ordering the plaintiff to pay the defendant the sum of R40; in default of payment, the defendant (mortgagee) to take possession of the land until the ... [illegible]

... of the mortgage-debt had been fully liquidated out of the surplus profits of the land *Held* that the defendant (mortgagee) was not liable to account to the plaintiff for such profits. Under the former decree, the defendant was entitled to take possession, and retain it with the attendant benefits until the plaintiff should pay a definite sum which he had never paid. The defendant held under the said decree a complete title to the land until such payment was made NAVLU *v.* RAGHU I. L. R., 8 Bom., 303

603. ——— *Mortgages in possession—Liability to account for profits, and to what extent.*—A mortgagee in possession ... [illegible]

[7 W. R., 244

604.——— *Mortgagee's charges—Mortgagee in possession, Duty of—Cultivation.*—*Held* that a mortgagee in possession of ... [illegible] which it ... BHIKAJI ...

[... Bom., 211

605. ——— *Suit for redemption of zur-i-peshgi mortgage—Balance which might have been recovered by mortgagee.*—Under the terms of a zur-i-peshgi mortgage,—*Held* that the

MORTGAGE—*continued*

10. ACCOUNTS—*continued.*

mortgagee was not ... [illegible]

till the balances recoverable at the time of the commencement of the redemption suit were paid by the mortgagor. RAM PERSHAD *v* KISHNA

[3 Agra, 146

606. ——— *Mortgagee's charges—Obligation of mortgagee in possession to repair.*—A mortgagee in possession of mortgaged premises is bound to keep them in necessary repair ... [illegible]

607. ——— *Allowances to mortgagee—Suit for redemption—Costs of repairs.* —In a redemption suit a mortgagee is entitled to credit for reasonable costs of repairs, if he renders an account of rents and profits LAKSHMAN BHISAJI SIRSEKAR *v.* HARI DINKAR DESAI

[I. L. R., 4 Bom., 584

608. ——— *Allowances to mortgagee—Conditional sale—Expense of repairs.* —In a suit brought to redeem certain ... [illegible]

estate. Where portion of the mortgaged premises was accidentally burned, and portion of them fell down, and the mortgagee rebuilt them, it was held that the mortgagor was not entitled to redeem, unless upon payment of the sum so expended by the mortgagee, though such sum amounted to more than double the price for which the premises had been conditionally sold to the mortgagee. MANOHARSHA ASHPANDIARJI *v.* KAMRUNISSA BEGAM

[5 Bom., A. C., 109

609. ——— *Allowances to mortgagee—Expenses of improvements ...* [illegible]

RAGHO BAGAJI *v.* ANAJI MANAJI PATIL

[5 Bom., A. C., 116

610. ——— *Allowance for improvements and repairs.*—Claims made by a mortgagee in respect of money laid out in improvements after the expiry of the day fixed for repayment must

MORTGAGE—*continued.*

10. ACCOUNTS—*continued.*

depend on an equitable consideration of all the circumstances of the case The English rule should be adopted under which the mortgagee is only allowed to claim for such outlay as has been required in order to keep the mortgaged premises in a good state of repair and to protect title. RAMJI BIN TUKARAM v. CHINTO SAKHARAM . 1 Bom., 199

611. ———————— *Directions for*

Sudder Adawlut, and the general understanding caused by these decisions, that, upon the non-payment by the mortgagor of the money at the time fixed, he had, according to the terms of the mortgage instrument, become the absolute owner of the property. The mortgagee was allowed the benefit for buildings erected, or permanent improvements made by him upon the mortgage premises. ANANDRAV v. RAVJI . . . . 2 Bom., 214

612. ———————— *Cost of improvements on property—Transfer of Property Act (IV of 1882), s. 63—Right of prior mortgagee* ... *rtgage out-* ... *n of the pro-* ... *of agricul-* ... *mortgagors,* spent money in repairing a well on the property which had been rendered useless from natural causes, it was held that such mortgagee was entitled, in a suit by a subsequent mortgagee against him for redemption, to add the amount so expended to the mortgage-debt to be paid by the plaintiff before he could obtain the decree for redemption claimed by him. DURGA SINGH v. NAURANG SINGH

[I. L. R., 17 All., 282

613. ———————— *Compound interest on money spent to protect property—Interest on money expended on improvements on property* —In a suit on a mortgage by conditional sale the mortgagee was held to be not entitled to compound interest upon the sum spent by him to protect the subject of the security, nor to interest upon the money expended by him in its improvement KISHORI MOHUN ROY v. GANGA BAHU DEBI

[I. L. R., 23 Calc., 228
L. R., 22 I A., 183

614. ———————— *Right of mortgagee in possession to execute repairs—Cost of improvements on redemption—Transfer of Property Act, s. 72* —Transfer of Property Act, s. 72 (*b*), does not permit a mortgagee in possession to effect improvements. Consequently in a suit for redemption the costs of such improvements cannot be legally charged against the mortgagor seeking to redeem. ARUNACHELLA CHETTI v. SITHAYI AMMAL

[I. L. R., 19 Mad., 327

615. ———————— *Value of improvements on redemption, Depreciatin of, between decree and date of redemption.*—A decree for the redemption of a kanam in Malabar was passed in December 1894 when there were on the land improvements in the form of trees, etc., to the value of R1,423. Within the six months limited by the decree for redemption, the mortgagor applied for execution, and it appeared that the value of improvements had diminished by the loss of trees of the value of R157. The loss was the result of want of water and was not attributable to neglect on the part of the mortgagee. *Held* that the loss should fall on the mortgagee. KRISHNA PATTER v. SRINIVASA PATTER . . . I. L. R., 20 Mad., 124

616. ———————— *Purchase of mortgaged property by decree-holder for inadequate price Right of purchaser—Improvements, Right*

whose mortgage he had notice; *D*, the son of the decree-holder, became the purchaser in execution and improved the land at a considerable cost. *C* now sued the sons and representatives of *A* and *B* (both deceased) on his mortgage, and sought a decree for sale. *Held* that the purchaser was not entitled to allowances for improvements RANGAYYA CHETTIAR v. PARTHASARATHI NAICKAR

[I. L. R., 20 Mad., 120

617. ———————— *Account of redemption of a mortgage—Appropriation of payments—Set-off of rents and profits—Expenditure on improvements—Interest—Transfer of Property Act (IV of 1882), s. 76—Lower Burma Courts Act (XI of 1889), s. 4.*—That an account should have been taken between mortgagor and mortgagee in possession consistently with the direction in s 76 of the

total was deducted at the end of possession from the sum expended by him. The balance of his expenditure had, in fact, exceeded in each year that of his

burdensome to the debtor. There was no obligation to pay off the compound interest debt before the other. Whether the improvements and the expendi-

manager was not paid, and in the account could be allowed, such allowance not having been decreed.

MORTGAGE—*continued*

10. ACCOUNTS—*continued.*

ot be allowed. KADIR MOIDIN *v.* NEPEAN [I. L. R., 26 Calc., 1 L. R., 25 I. A., 241 2 C. W. N., 665

618. ——— *Suit for redemption—Mortgagee in possession.*—A mortgagee in possession is liable to account for profits arising from

gage-debt with interest thereon, the mortgagee ought to be credited for his expenses in obtaining produce from the land and a moderate interest on the amount of such expenses. Principles laid down on which an account should be taken from a mortgagee in possession. PRABHAKAR CHINTAMAN DIKSHIT *v.* PANDURANG VINAYAK DIKSHIT [12 Bom., 88

619. ——— *Improvements and accretions, Right to—Fruit trees.*—The holder of a field, on the survey tenure, mortgaged it with possession, secured by a registry of the mortgagee's name as occupant. Certain fruit trees, coming

620. ——— *Village mortgaged without specifying boundaries—Accretions to village—Rights of parties on redemption or foreclosure.*—Where a village, without specification of boundaries, is mortgaged as a whole, the mortgagee

621. ——— *Expenses of revenue survey.*—*Held* that a mortgagee in possession was entitled to be allowed for expenses incurred in connection with the revenue survey of the land mortgaged to him. BAPUSA BIN SADASHIV *v.* RAMJI BIN GOPALJI . . . 2 Bom., 220

622. ——— *Mortgagee in possession—Payment by mortgagee of assessment payable by mortgagor—Right of mortgagee to tack amount so paid to mortgage-debt.*—Where a mortgagee in possession pays the assessment on the mortgaged land which was payable by the mortgagor, he has a right to tack on the amount so paid to his mortgage-debt. KAMAYA NAIK *v.* DEVAPA RUDRA NAIK . . . I. L. R., 22 Bom., 440

623. ——— *Transfer of Property Act (IV of 1882), s. 72—Mortgagee compelled to pay Government revenue which should have been paid by the mortgagor—Remedies of the mortgagor.*—Where a mortgagee has been compelled to pay Government revenue which should have been paid by the mortgagor, the mortgagee may either add the amount which he has so been made to pay to the amount of the mortgage-debt under s. 72 of the Transfer of Property Act, 1882, or he may sue the mortgagor separately to recover the amount so paid. If, however, he has sued separately and obtained a

624. ——— *Mortgagee, Obligation of—Expenses incurred in protecting title—Stipulations not creating fresh obligations.*—

obligation. DAMODAR GUNGADHAR *v.* VAMANRAV LAKSHMAN. . . . I. L. R., 9 Bom., 435

625. ——— *Right of purchaser of equity of redemption to set off sums paid*

626. ——— *Suit by pur-*

MORTGAGE—*continued.*

10. ACCOUNTS—*continued.*

the mortgaged property redeemed from *B* by the original owner. The Subordinate Judge allowed the plaintiff's claim. On appeal, the District Judge con-

tion of the mortgaged property by the original owner, because they were aware that the mortgage to *B* was liable to be redeemed, and they (defendants) took such a precarious security at their own risk. In a redemption suit the defendant (mortgagee) is ordinarily entitled to his costs, unless he has refused a tender of the amount due to him, or has so misconducted himself in the course of the suit as to induce the Court to subject him to a penalty. DHONDO RAMCHANDRA *v* BALKRISHNA GOBIND

[I. L. R., 8 Bom., 190

627. ———— *Costs incurred by mortgagee—Transfer of Property Act (IV of 1882), s. 72.*—Land, having been mortgaged to the defendant, was let by him for rent to the mortgagor. *The rent fell into arrear, and the mortgagee sued and* obtained a decree for the rent in arrear and for possession. Subsequently after the mortgagor's death, her heir, the present plaintiff, unsuccessfully resisted

between him and the plaintiff, but not in the proceedings between him and the original mortgagor. POKREE SAHEB BEARY *v.* POKREE BEARY

[I. L. R., 21 Mad., 34

628. ———— *Interest—Proof of accounts—Failure to keep or omission to produce accounts.*—In seeking to have the account taken and to have it ascertained whether the mortgagee has by means of the usufructuary mortgage obtained more than 12 per cent interest, and if so, that the

629. ———— *Usury laws—*

jumma, pay the Government demand, and take the malikana, of which part was to be received by him as interest on the money lent at one per cent per mensem, and the balance, *viz.*, R565 per annum, was to be retained by him as the costs of collection. No accounts were to be rendered of the malikana

would have been void under the usury laws (in force

collection, it was held that the agreement had been rightly treated as a sufficient answer to a suit based on the assumption that the whole of the mortgage-money, principal and interest, would be satisfied if ... were taken ... with the ... to prove ... If the amount received by the mortgagee had been fluctuating, production of the accounts might have been necessary for a decision on the validity of the

DHAR . . . . I. L. R., 2 All., 593

[L. R., 7 I. A., 51

630. ———— *Mortgagee in possession—Interest—Beng. Reg. XV of 1793.*—In taking the accounts as between a mortgagor and a mortgagee in possession, the interest may be set off from time to time against the rents and profits, the mortgagee only accounting to the mortgagor for any rents, profits, and interest on the same which he may have received over and above the interest due to him upon the debt RADHABENODE MISSER *v.* KRIPAMOYEE DABEE . 10 B. L. R., 386: 17 W. R., 262

[14 Moore's I. A., 443

631. ———— *Interest on collections by mortgagee—Commission on amount col-*

MORTGAGE—*continued.*

10. ACCOUNTS—*continued.*

is shown to be unreasonable. ROGHONATH *v.* LUCHMUN SINGH . . . . . 1 Agra, 132

632. ———— *Redemption after expiry of time* ...

... property under the new interpretation of the law of mortgage, yet considered that, under the peculiar ...

... the value of improvements made since the time the property came into the hands of *A* disallowed. RAMSHET BACHASHET *v.* PANDHARINATH [8 Bom., A. C., 236

633. ———— *Suit by mortgagor for possession under usufructuary mortgage.*—In a suit to recover possession of land with surplus ...

... should be charged in the account for actual rents and profits, and receive interest at the highest rate sanc- ...

[24 W. R., 275

634. ———— *Mortgagee in possession—Interest.*—The proper sum to be allowed a mortgagee for surinjamee is what he has actually spent as expenses of his management No decree should be given against a person as being the real mortgagee ...

A mort ...
balance ...
SINGH ...

635. ———— *Interest—Mode of calculation.*—There is no law ...

DOORGA CHURN PAHAREE *v.* CHUTOORBHOOJ DOSS [5 W. R., 200

636. ———— *Suit for redemption—Interest—Amount of interest allowed to mortgagee—Transfer of Property Act (IV of 1882), s. 58.*—In 1882 the plaintiffs sued to redeem a mortgage effected in 1833. The Court of first instance allowed the mortgagee interest from the date of the bond. The Appellate Court reduced the interest awarded to the period of six years. *Held,* reversing the decision of the lower Appellate Court, that the mortgagee was entitled to claim interest from the date of the bond up to the date of the decree *Hari Mahadaji Sarashkar v. Balambhat Raghunath Khare, I. L. R., 9 Bom., 233,* referred to. No provision of limitation is made by the Limitation Act for the payment of interest on the sum due to the mortgagee. In s. 58 of the Transfer of Property Act the mortgage-money is interpreted to include the interest due, and no time to the payment of interest is fixed. *Prabhakar Chintaman Dikshit v. Pandurang Vinayak Dikshit, 12 Bom., 88,* followed. DAUDBHAI RAMBHAI *v.* DAUDBHAI ALLIBHAI [I. L. R., 14 Bom., 113

637. ———— *Mortgage transactions before Act XXVIII of 1855—Bom. Reg. V of 1827, ss. 11 and 12—Arrears of interest* ...

... the arrears of interest must be limited to six years. VITHAL MAHUDEB *v.* DAND VALAD MAHOMMED HOSSEIN . . . 6 Bom., A. C., 90

638. ———— *Provision for payment of interest* ...

639. ———— Mortgage with decree for account and sale—*Withdrawal of execution-proceedings—Principle on which accounts are to be taken.*—A mortgagee, who has obtained a decree for an account and sale, is not entitled to withdraw from the taking of accounts in his execution-proceedings when those accounts appear to be going against him. DOOLEE CHAND *v.* OMDA KHANUM *alias* BABU SHUBIDU I. L. R., 6 Calc., 377 : 7 C. L. R., 375

640. ———— Right to re-open accounts—*Suit by mortgagor for possession under usufructuary mortgage.*—In a suit to recover possession of land in the possession of the mortgagor under a usufructuary mortgage (which is in reality a suit between the mortgagor and mortgagee for an adjustment of the account between them), if upon

MORTGAGE—*continued.*

10. ACCOUNTS—*continued.*

being overruled) the Court is bound as a Court of Equity, and acting upon the principle that it is

and *see* ROY DINKUR DYAL *v.* SHEO GOLAM SINGH [22 W. R., 172

and LUTAFUT HOSSEIN *v.* CHOWDHRY MAHOMED MOONEM . . . . 22 W. R., 269

641. ——— Realization by mortgagee of sum in excess—*Interest—Usufructuary mortgage*—Where a mortgagee under a usufructuary mortgage has realized a sum of money in excess of the amount due to him, it is an equitable practice to allow to the mortgagor interest on such sum at the same rate at which interest has been allowed to the mortgagee on his mortgage-debt. BECHOO SINGH *v.* ROY SHEO SAHOY 1 N. W., 56: Ed. 1873, 111

642. ——————*Suit for account and redemption—Form of decree*—In a suit for account and redemption, if the mortgagee, on taking the accounts, is found to have been overpaid, the general practice is to order the payment, by him, of the balance due to the mortgagor, with interest from the date of the institution of the suit. JANOJI *v.* JANOJI . . . . I. L. R., 7 Bom., 185

643. —————— *Suit for redemption of two distinct mortgages—Right to separate accounts—Dekkan Agriculturists' Relief Act (XVII of 1879), s. 13—Mode of taking accounts.*—By two separate mortgages certain land were mortgaged in 1830 by the plaintiff's father to the defendant. In 1882 the plaintiff as an agriculturist brought the present suit for redemption of the lands comprised in both mortgages *Held* that separate accounts of the two mortgages should be taken. The mortgages were distinct transactions relating to different lands, and s 13 of the Dekkan

(mortgagor) by the defendant (mortgagee), and on the other mortgage a sum of R3,774-2-7 due to the defendant by the plaintiff. The plaintiff contended that, although by the ruling in *Janoji v. Janoji, I. L. R., 7 Bom., 185*, he could not compel payment of the R5,075-13-2 due to him on the one mortgage, he was entitled to have so much of it as might be necessary set-off against the R3,774-2-7

MORTGAGE—*concluded.*

10 ACCOUNTS—*concluded.*

still due by him on the other mortgage. *Held* that on the authority of *Janoji v. Janoji, I. L. R., 7 Bom., 185*, the plaintiff had no legal claim to

precluded from compelling the mortgagee to refund what the latter had personally acquired under the terms of his contract of mortgage RAMCHANDRA BABA SATHE *v.* JANARDAN APAJI [I. L. R., 14 Bom., 19

644. ——————Binding effect of account—*Mortgagor and mortgagee—Puisne mortgagee.—Quære*—Whether the account arrived at in a decree obtained by the prior mortgagee against the mortgagor only is binding on a puisne mortgagee who had no notice of the subsequent incumbrance. SANKANA KALANA *v.* VIRUPAKSHAPA GANESHAPA [I. L. R., 7 Bom., 146

645. —————————— *Assignee of mortgagee—Suit for redemption*—In India, as in England, a mortgagee may transfer his rights to a third person by way of assignment, but such transfer must be without prejudice to the rights of the mortgagor, and in a suit by a mortgagor for redemption where the assignment has been made without the

646. ——— Error in account—*Ground for reforming account—Wrong statement of account agreement to pay mortgage debt by instalments.*

[I. L. R., 3 Calc., 602: 2 C. L. R., 156 L. R., 5 I. A., 73

MORTGAGE-DEBT.

——— Apportionment of—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR. [3 B. L. R., A. C., 357

See MORTGAGE—ACCOUNTS. [I. L. R., 15 Bom., 257

See CASES UNDER MORTGAGE—MARSHALLING.

MORTGAGE-DEBT—*concluded.*

See MORTGAGE—REDEMPTION—REDEMPTION OF PORTION OF PROPERTY
[13 Moore's I. A., 404
24 W. R., 47
15 B. L. R., 303
I. L. R., 4 Calc., 72
I. L. R., 9 Mad., 453
I. L. R., 17 All., 63
I. L. R., 21 Bom., 544

See TRANSFER OF PROPERTY ACT, s 82
[I. L. R., 18 Calc., 320
I. L. R., 14 Mad., 71
I. L. R., 19 All., 545

——— Payment of portion of—

See LIMITATION ACT, 1877, ART. 146 (1871, ART. 149)
[I. L. R., 4 Calc., 283

See CASES UNDER MORTGAGE—REDEMPTION—REDEMPTION OF PORTION OF PROPERTY.

MORTGAGED PROPERTY.

——— Decree against—

See CASES UNDER DECREE—CONSTRUCTION OF DECREE—MORTGAGE.

See CASES UNDER DECREE—FORM OF DECREE—MORTGAGE.

——— out of jurisdiction.

See CASES UNDER JURISDICTION—SUITS FOR LAND—GENERAL CASES—FORECLOSURE

See CASES UNDER JURISDICTION—SUITS FOR LAND—GENERAL CASES—LIEN.

See JURISDICTION—SUITS FOR LAND—GENERAL CASES—REDEMPTION.
[I. L. R., 1 All, 431
1 Ind. Jur., N. S., 319

MORTGAGEE

——— Acknowledgment by—

See LIMITATION ACT, s 19—ACKNOWLEDGMENT OF OTHER RIGHTS.

——— in possession.

See CASES UNDER MORTGAGE—ACCOUNTS.

See CASES UNDER MORTGAGE—POSSESSION UNDER MORTGAGE.

MORTGAGOR AND MORTGAGEE.

See CASES UNDER EQUITY OF REDEMPTION.

See CASES UNDER MORTGAGE.

See PARTIES TO CONVEYANCE.
[12 B. L. R., Ap., 7

MORTMAIN, STATUTES OF—

See WILL—CONSTRUCTION.
[14 B. L. R., 442

MOSQUE.

See CASES UNDER MAHOMEDAN LAW—MOSQUE.

——— Management of—

See MAHOMEDAN LAW—ENDOWMENT.
[I. L. R, 18 Bom, 401

MOTHER.

See HINDU LAW—ALIENATION—ALIENATION BY MOTHER.

See CASES UNDER HINDU LAW—GUARDIAN—POWERS OF GUARDIANS

See HINDU LAW—GUARDIAN—RIGHT OF GUARDIANSHIP . I. L. R., 5 Calc, 43
[7 W. R., 73
3 W. R., 194

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—MOTHER.

See CASES UNDER MAHOMEDAN LAW—GUARDIAN.

——— Power of—

See CASES UNDER GUARDIAN—DUTIES AND POWERS OF GUARDIANS.

——— Unchastity of—

See CASES UNDER HINDU LAW—WIDOW—DISQUALIFICATIONS—UNCHASTITY.

MOTIONS.

——— Taking further evidence on—

See PRACTICE—CIVIL CASES—MOTIONS.

MOULMEIN, JUDGE OF—

See JURISDICTION—ADMIRALTY AND VICE-ADMIRALTY JURISDICTION.
[24 W. R., 50

MOVEABLE PROPERTY.

See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT . I. L. R., 16 All., 186

See CRIMINAL BREACH OF TRUST.
[I. L. R, 23 Calc., 372

See PERPETUITIES.
[I. L. R., 20 Bom, 511

See REGISTRATION ACT, 1877, s 3.
[3 Agra, 157
3 B. L. R., A. C., 194

See REGISTRATION ACT, 1877, s 17.
[I. L. R., 10 All., 20

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL — JURISDICTION — MOVEABLE PROPERTY.

MOVEABLE PROPERTY—*concluded.*

See CASES UNDER SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—MOVEABLE PROPERTY.

See THEFT . I. L. R., 10 Mad., 255
[I. L. R., 15 Bom., 702

——— Execution of warrant against—

See EXECUTION OF DECREE—MODE OF EXECUTION GENERALLY AND POWERS OF OFFICERS IN EXECUTION.
[5 B. L. R., Ap., 27: 13 W. R., 339

See SMALL CAUSE COURT, MOFUSSIL—PRACTICE AND PROCEDURE—EXECUTION OF DECREE.

MOWRA FLOWERS.

——— Possession of, for distillation.

See BOMBAY ABKARI ACT, 1878, s. 43, CL. *f.*
[I. L. R., 9 Bom., 556

MULTIFARIOUSNESS.

See ADMINISTRATION 15 B. L. R., 298
[I. L. R., 26 Calc., 891
3 C. W. N., 670

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—MISJOINDER.

See CASES UNDER JOINDER OF CAUSES OF ACTION.

See MALABAR LAW—JOINT FAMILY.
[I. L. R., 15 Mad., 19

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.
[14 B. L. R., 418 note

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—MULTIFARIOUSNESS.

See SPECIFIC RELIEF ACT, s. 27.
[I. L. R., 1 All., 555

——— Dismissal of suit for—

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS 13 B. L. R., Ap., 37

1. ——— Misjoinder of causes of action—*Different causes of action against different parties.*—When a plaint discloses different causes of action against different parties, it is bad in law, and the suit is not maintainable. SARAT SOONDERY DEBI *v.* SURJUKANT ACHARJI CHOWDHRY
[2 B. L. R., Ap., 53: 11 W. R., 397

MOTEE LALL *v.* BHOOP SINGH
[2 Ind. Jur., N. S., 245

S. C. MOTEE LALL *v.* RANEE . 8 W. R., 64

2. ——— *Causes of action accruing against parties separately—Rejection of plaint.*—A plaint against several defendants for causes of action which have accrued against each of them separately, and in respect of which they are not jointly concerned, should be rejected. RAJARAM TEWAR *v.* LUCHMUN PRASAD
[B. L. R., Sup. Vol., 731: 2 Ind Jur., N. S., 216
8 W. R., 15

PANCH COWREE MAHTOON *v.* KALEE CHURN
[9 W. R., 490

PEGOO JAN *v.* MULLICK WAIZOODDEEN
[18 W. R., 464

3. ——— *Separate claims against separate parties.*—A suit against five defendants including claims of the most miscellaneous

claims, and further held that the suit was not multifarious. *Held* on special appeal that the Court could not select one claim on which to proceed when plaintiff

RAM DOYAL DUTT *v.* RAM DOOLAL DEB
[11 W. R., 273

4. ——— *Distinct causes of action against separate defendants.*—It is illegal to join different causes of action in the same suit against different parties where each has a distinct and separate interest, *e.g.*, to a joint action for the price of timber against defendants who purchased each one pair of timber from the plaintiff separately from the other. BABOO SIRCAR *v.* MASSIM MUNDUL
[21 W. R., 206

5. ——— *Suit to set aside alienation by guardian to different alienees.*—Several causes of action against different defendants

PERSHAD *v.* BHUGMANEE
[1 N. W., 75: Ed. 1873, 128

See RUTTA BEEBEE *v.* DUMREE LAL
[2 N. W., 153

LOOLOO SINGH *v.* RAJENDUR LAHA
[8 W. R., 364

GOLAM MUSTAFA KHAN *v.* SHEO SOONDUREE BURMONEE . . . . . 10 W. R., 187

HURRO MONEE DOSSEE *v.* ONOOKOOL CHUNDER MOOKERJEE . . . . . 8 W. R., 461

6. ——— *Suit to set aside*

7. ——— *Joinder of causes of action—Claim against different portions of property.*—Where the plaintiff claims to recover possession of two distinct portions of a property from

MULTIFARIOUSNESS—*continued.*

which he has been dispossessed at different periods and under different circumstances, and claims them under the same title and from the same party, there is no impropriety in the two claims being joined in one suit. JUNOKEE CHOWDHRANEE *v.* DWARKANATH CHOWDHRY . . . 1 Hay, 555

8. ——— *Separate alienations of property.*

to secure the soundness of the particular decision, and perhaps the avoidance of discordant decisions in different cases upon facts nearly the same VASUDEVA SHANBHAGA *v.* KULEADI NARNAPAI [7 Mad, 290

9. ——— *Suit by members of tarwad to set aside alienations by karnavan* —A suit was brought by the junior members of a tarwad, which consisted of three stanoms and three tavaries,

vans, had forfeited their right of succession to him, (3) for the appointment of the plaintiff in his place; (4) for a declaration that his alienations were invalid as against the tarwad; and (5) for possession of the property alienated Subsequently, the plaint was amended by the order of the Court by striking out items 2 and 5 of the prayer, and finally the plaintiffs further amended the plaint and sued only for a declaration that the alienations in question were invalid. *Held* that the suit was not bad for multifariousness *Vasudeva Shanbhaga* v. *Kuleadi Narnapai, 7 Mad., 290,* considered. MAHOMED *v.* KRISHNAN . . I. L. R., 11 Mad., 106

10. ——— *Civil Procedure Code, s. 45—Suit for declaration that alienations were not binding—Malabar law—Suit by junior members of tarwad* —Suit by some of the junior members of a Malabar tarwad against the karnavan and the other members of the tarwad, and certain persons to whom some of the tarwad property had

[I. L. R., 12 Mad., 234

11. ——— *Misjoinder of*

MULTIFARIOUSNESS—*continued.*

against him under s. 332 of the Civil Procedure Code. These proceedings resulted in their claims being decided in their favour. The plaintiff thereupon

NARAIN DUT *v.* ANNODA PROSAD JASHI [I. L. R, 14 Calc, 681

12 ——— *Misjoinder of parties—Civil Procedure Code (1882), ss. 28, 31, 373, and 378—Error not affecting merits of suit—Withdrawal of suit—Meaning of "cause of action."* —Where a plaintiff, alleging himself to be entitled on the death of a Hindu widow to the possession of

separate portions of the property claimed,—*Held* that such suit was bad for misjoinder of both parties and

Narnapai, 7 Mad, 290; Banee Krishun v *Koondun Lal, 2 N. W., 221, Koondun Lal* v. *Himmut Singh, 3 N W., 86, Narsingh Das* v *Mangal Dubey, I. L. R., 5 All., 163, Kachar Bhoj Vaija* v. *Bai Rathore, I L. R., 7 Bom, 289; Sudhendu Mohun Roy* v. *Durga Das, I. L. R, 14 Calc., 435;* and *Ram Narain Dut* v. *Annoda Prosad Joshi, I. L. R., 14 Calc., 681,* referred to GANESHI LAL *v.* KHAIRATI SINGH . . I. L. R, 16 All., 279

13. ——— *Civil Procedure Code (1882), ss. 31, 45, and 53—Return of plaint.* —The term "cause of action" as used in ss. 31 and 45 of the Code of Civil Procedure is there used in the same sense as it is used in English law, *i.e.,* a cause

brought a joint suit for the possession of immoveable property, in which two of them were claiming half the property under a title by inheritance, and the third was claiming the other half of the property in virtue of a sale thereof to him by the first two plaintiffs,—*Held* that the suit so framed was bad for misjoinder of causes of action, and that the plaint

MULTIFARIOUSNESS—*continued.*

should be returned, that the plaintiffs might elect which of them should proceed with the suit. *Jugobundhoo Dutt* v. *Maseyk, W. R. (1864), 81; Annund Chunder Ghose* v. *Komul Narain Ghose, 2 W. R., 219; Prem Shook* v. *Bheekoo, 3 Agra, 242; Cook* v. *Gill, L. R., 8 C. P., 107; Read* v.

[illegible]

BIBI *v.* MUHAMMAD . I. L. R., 18 All., 131

14. ——— *Suit by one plaintiff claiming by inheritance and another claiming as assignee from the first—Civil Procedure Code, ss. 31, 45, and 53.*—Where two plaintiffs joined in a suit for recovery of immoveable property, the one claiming a title by inheritance and the other a title by assignment from the first plaintiff, it was *held* that the suit was bad for misjoinder of causes of action. *Salima Bibi* v. *Muhammad, I. L. R., 18 All., 131,* followed RAHIM BAKHSH *v.* AMIRAN BIBI . . . . I. L. R., 18 All., 219

15. ——— *Misjoinder of parties—Civil Procedure Code, s 53—Suit to set aside deed in fraud of creditors—Amendment of plaint.*—*Held* that several creditors, to each of

[illegible]

[I. L. R., 18 All., 432

16. ——— *Suit for ejectment—Suit against several defendants—Parties, Joinder of.*—In a suit for ejectment against several defendants who set up various titles to different parts

[illegible]

of action. ISHAN CHUNDER HAZRA *v.* RAMESWAR MONDOL . . . I. L. R., 24 Calc., 831

DHAPI *v.* BARHAM DEO PERSHAD

[4 C. W. N., 297

17. ——— *Joinder of several plaintiffs in respect of separate causes of action—Contribution, Suit for—Civil Procedure Code (1882), s. 578—Irregularity affecting merits.*

[illegible]

patnis to save the patnis from being sold for arrears of rent; and the remainder by plaintiff No. 2, who alleged that she had a subordinate miras talukh under the two patnis granted to her by plaintiff No. 1, and that the sale would have resulted in the cancellation

MULTIFARIOUSNESS—*continued.*

[illegible]

causes of action. This objection had been raised in the written statement, and the Court was asked to

[illegible]

raise the objection as to misjoinder in appeal.

[illegible] 20 *W. R.,* ... *ay, L. R.* ... CHANDRA KRAVARTI CHOWDHRY . . I. L. R., 24 Calc., 540

18. ——— *Suit against different alienees.*—Where a plaintiff sued to recover an estate in possession of several persons, who held, not collectively, but in different portions by virtue of several auction and private sales and mortgages,—*Held* that the Court of first instance should have dismissed the plaint for misjoinder, leaving the plaintiff to bring separate suits in respect of the several pieces of property in possession of each defendant or set of defendants. TEWAREE RAGHOONATH SAHAI *v.* MAHOMED NAZEER 4 N. W., 108

19. ——— *Suit for portions of property in different hands.*—The auction pur-

[illegible]

sue the whole community in the aggregate for all the lands of the village. RAMCHUNDER PAUL *v.* OMORA CHURN DEB . . . . 16 W. R., 155

20. ——— *Suit for mesne profits in respect of several estates.*—Plaintiff, having obtained a decree establishing his title to a number of villages constituting one talukh, subsequently brought one suit against all the persons

[illegible]

KOONDUN LAL *v.* HIMMUT SINGH . 3 N. W., 86

21. ——— *Suit by son against several purchasers to set aside sale by father.*—In a suit by a son against a father and certain purchasers to obtain a declaratory decree in

[illegible]

MULTIFARIOUSNESS—*continued.*

22 ———

the suit on the ground of misjoinder of causes of

AMMANI ACHY . . 7 Mad., 260

23. ——— *Civil Procedure Code, 1882, s. 45— Hindu law—Suit for partition—Alienees made parties to suit* —Where a suit

Court to have ordered, under s. 45 of the Code of Civil Procedure, separate trials to be held in respect of each alienation. SUBRAMANYA *v.* SADASIVA
[I. L. R., 8 Mad., 75

24 ——— *Suit to recover property sold in execution of decree* —Certain properties were sold to *A* by private contract Subsequently the properties were attached in execution of

Rajaram Tewari v. *Luckmun Prasad, B L. R., Sup. Vol., 173 8 W. R., 15,* distinguished HARANUND MOZOOMDAR *v.* PROSUNNO CHUNDER BISWAS
[I. L R , 9 Calc., 763: 12 C. L. R., 556

25

26. ——— *Suit to set aside*

MULTIFARIOUSNESS—*continued.*

CHUNDER PAUL *v.* MOTHOOR MOHUN PAUL CHOWDHRY . . . . . 4 W. R., 109

27 ———

ent causes
Under five
leases of fi

28 ——— *Suit for possession of different portions of property after eject-*

the defendants each claimed to hold portions of the property under different titles could not make the suit bad for misjoinder ACKJOO BIBEE *v.* LALLAH RAM CHUNDER LALL SAHAI 23 W. R., 400

29. ——— *Suit for decla-*

who were in possession might be restrained by injunction from recovering the rents of, or intermeddling with, the said lands or premises, and that it might be referred to the Court in chambers to appoint a proper person to act as mutwalli under the said towliatnamah, and that such mutwali, when so ap-

grounds were disclosed for relief in a suit in equity, and that the proceeding should have been by way of ejectment against each of the defendants. The suit was accordingly dismissed. If the defendants in such a suit be intruders and strangers, there is no

30. ——— *Held* that there was no misjoinder of different causes in a suit including plaintiff's whole claim, where his cause of action was that the Revenue Commissioners had taken possession of his lands and given it in pottah to other people. IN THE MATTER OF RUTNESSUR DASS
[14 W. R., 381

MULTIFARIOUSNESS—*continued.*

31. ———— *Suit to enforce the right of pre-emption—Civil Procedure Code,*

emption in respect of sales. *Held* that the frame of the suit was bad by reason of misjoinder of defendants and causes of action, and the suit had been properly dismissed on that ground. BHAGWATI PRASAD GIR *v.* BINDESHRI GIR . I. L. R., 6 All., 106

32. ———— *Civil Procedure Code, 1877, s. 45—Pre-emption, Suit for—Irregularity not affecting merits or jurisdiction.*—The sons of *E* and of *K* and of *S* possessed proprietary rights in

to enforce a right of pre-emption in respect of the three sales mentioned above, so far as they related to the mehal of which he was a co-sharer, joining as defendants *G* and *N* and the vendors to them *G* alone objected in the Court of first instance to the frame of the suit That Court overruled the objection and gave *P* a decree. The lower Appellate Court reversed this decree on the ground of misjoinder. *Held* that in respect of *G* there was no misjoinder but that, in respect of the other defendants, there was misjoinder of both causes of action and parties. KALLAN SINGH *v.* GUR DAYAL

[I. L. R., 4 All., 163

33. ———— *Civil Procedure Code, ss. 28, 45.*—The judgment of the majority of

immoveable property, part of which had been usu-

34. ———— *Suit against several defendants for possession—Dispossession under forged document.*—A suit in which the plaintiff alleged that the defendants (including raiyats

MULTIFARIOUSNESS—*continued.*

against whom he had been unsuccessful in the Collector's Court) had, in combination, fraudulently availed themselves of a fabricated jamabandi paper as evidence to support certain mokurrari claims, and had thereby ousted him from the full enjoyment of his milkiat right, was held to be simple in its character and not multifarious. GUJADHUR PERSHAD NARAIN SINGH *v.* SAHEB ROY . 19 W. R., 203

In the same case after remand the plaintiff, having failed to prove the allegation of forgery, claimed a declaration that the defendants had not a right to occupy the land at a fixed rent. *Held* that such a declaration could rightfully be asked for only in a separate suit against each separate occupant. SAHEB ROY *v.* GUJADHUR PERSHAD NARAIN SINGH

[22 W. R., 221

35. ———— *Joint trespassers.*

Against one of the defendants who claimed a particular portion of the lands under the tenure in question, they brought a suit in 1869; but this suit was finally dismissed in June 1876, on the ground that all the persons, who were claimants of any part of

tiffs' claim being to recover possession against persons who were alleged to be joint trespassers. OMUR ALI *v.* WEYLAYET ALI . . 4 C. L. R., 455

36. ———— *Civil Procedure Code, 1852, s. 28—Suit for declaratory decree—Specific Relief Act (I of 1877), s. 42.*—The plaintiffs, having obtained a decree for the possession of certain lands and having received formal possession thereof, brought a suit against eighty-six persons

measure the lands, driving away an Ameen who went to measure the lands on behalf of the plaintiffs,

and thereby preventing us exercising our proprietary

MULTIFARIOUSNESS—*continued.*

that there was but one and the same cause of action against all the defendants,—*viz*, a combination to keep the plaintiffs out of the enjoyment of the property they had purchased; and that the suit was not multifarious within s 28 of the Civil Procedure Code. LOKE NATH SURMA *v.* KESHAB RAM DOSS [I. L. R, 13 Calc, 147

37. ———— "*Multifarious*" *suit—Act X of 1877 (Civil Procedure Code), ss. 28, 45.*—Defendant No 1, the tenant of certain land at fixed rates, on the 12th November 1877 sold his interest in the land to the plaintiff. At the time of the sale the land was in the actual possession of defendant No 2, defendant No 1's sub-tenant,

... to obtain possession of the land, but was resisted by defendant No. 2 He thereupon instituted a charge of criminal trespass against the latter. This criminal proceeding was pending when, on the 14th September 1878, defendant No 1 obtained a second order for defendant No 2's ejectment Under this order he obtained possession of the land, and also of the crop planted by defendant No 2, which he sold to defendant No 3 on the 22nd September 1878. On the 25th of the same month the plaintiff's charge of criminal trespass against defendant No. 2 was dismissed, on the ground that defendant No. 1 was in possession, and the plaintiff had never obtained possession under his purchase Defendant No 1 subse-

September 1878, when defendant No 1 took posses-

September 1879) against defendants Nos. 1 and 3;

DAS *v.* MANGAL DUBEY . I. L. R., 5 All, 163

38. ———— *Suit for possession and mesne profits—Civil Procedure Code, s. 45.*

MULTIFARIOUSNESS—*continued.*

MAJID I. L. R., 14 All., 531

39 ———— *Detention in jail—Suit by thirteen persons jointly for damages for detention—Plaint taken off the file—Separate causes of action—Practice—Act XIV of 1882,*

imprisonment to which they had been sentenced had expired, claiming R2,600 as damages The defendant applied to have the plaint taken off the file on the ground that the plaintiffs had improperly joined in one suit several distinct and separate causes of action accruing to them as separate individuals. *Held* that the plaint must be taken off the file. ALI SERANG *v.* BEADON I L. R, 11 Calc., 524

40. ———— *Suit on foreign*

original cause of action, and *B*, *C* upon the foreign judgment, the suit was bad for misjoinder. LAKSHMANAN CHETTI *v.* KARUPPAN CHETTI [I. L. R., 6 Mad., 273

41. ———— *Suit for share of zamindari cesses realized by auction-sale in execution of decree—Joinder of causes of action—*

42. ———— *Suit for sale-pro-*

Court, the proceeds being distributed in proportion to the amount of the decrees. In a suit brought against

MULTIFARIOUSNESS—*continued.*

the defendant, on the allegation that the plaintiffs were entitled to the whole of the proceeds, or in the alternative for distribution on a different principle,—*Held* that there was no misjoinder of causes of action by reason of all the defendants being included in one suit. GOURI PROSAD KUNDU *v.* RAM RATAN SIRCAR . . . . . I. L. R., 13 Calc., 159

43. ———————— *Separate liability of defendants for rent.*—In a suit to recover rent from defendants, with whom engagements had been entered into separately, plaintiff obtained a decree

tion to the rent he had engaged to pay, the objection of misjoinder would not have been allowed to prevail. JUMOONA DOSS *v.* POOKHUR SINGH 22 W. R., 133

44. ———————— *Suit for rent—Purchaser of portion of tenure—Civil Procedure*

45. ———————— *Suit for contribution.*—The plaintiff was compelled to pay the whole

46. ———————— *Suit for contribution.*—In a suit against *A K* for contribution of moneys paid in satisfaction of two decrees under which the present plaintiffs and defendants were jointly liable, and one of which decrees was founded on an ikrar executed by the parties to the present suit and by

47. ———————— *Parties—Suit for contribution.*—The purchaser of a share in a mortgaged estate, who has paid off the whole mortgage-debt in order to save the estate from foreclosure, can claim from each of the mortgagors a contribution proportionate to his interest in the property, but he cannot claim from the other mortgagors collectively the whole amount paid by him. HIRA CHAND *v.* ABDAL [I. L. R., 1 All., 455

MULTIFARIOUSNESS—*continued.*

See RUJAPUT RAI *v.* MAHOMED ALI KHAN [5 N. W., 215

48. ———————— *Joinder of parties—Contribution, Suit for.*—Where the owner of two villages sold under a decree obtained upon a mortgage, claims contribution proportionately against the owners of the other properties included in the mortgage, and does not claim from them all collectively one lump sum as contribution, he may join all the contributors in one suit, and is not bound to bring separate suits for contribution against the separate owners. *Hira Chand* v. *Abdal, I. L. R., 1 All., 455*, distinguished. *Rujaput Rai* v. *Mahomed Ali Khan, 5 N. W., 215*, *Tavasi Telavar* v. *Palani Andi Telavar, 3 Mad., 187*, *Khema Debea* v.

separate suit in respect of each sale. IBN HUSAIN *v.* RAMDAI . . . I. L. R., 12 All., 110

49. ———————— *Institution of suit to redeem, pending a suit by plaintiff to establish his title as representative of the mortgagee.*—

H. These 6 biswas were in the defendants' possession. The plaintiffs sued to recover possession of

prietors, having acquired *D*'s rights by private purchase in 1847, and *H*'s rights similarly in 1851. They also pleaded that, inasmuch as the plaintiffs had brought a suit to establish the sale alleged to have been made to them by *H*'s sons, and that suit was still pending, the claim for possession of *H*'s share could not be maintained; and they lastly pleaded that, inasmuch as the plaintiffs admitted that the rights of *D* and *H* were acquired by them under separate sales, their claims to those rights could not be joined in one suit. The plaintiffs replied that, assuming the claim to *H*'s share could not be maintained on the basis of the alleged sale to them, they were nevertheless entitled to possession of *H*'s share in virtue of their right to *D*'s share, both shares having been jointly mortgaged. *Held* that the plaintiffs were entitled to ask in one suit for a deter-

right to sue to recover possession from the mortgagees, although it might have been necessary to determine incidentally in the suit the question at issue in the suit respecting the purchase. *Held* also that, if the plaintiffs established their right to

MULTIFARIOUSNESS—*continued*

the share of *D*, but failed to prove their title as purchasers of *H*'s share, they could not obtain possession of the share on the ground that it was mortgaged jointly with the shares they already held, and with the share of *D*, for, according to their own allegation, the mortgage-debt had been redeemed, and there was no longer any common liability which they were required to discharge MOHUN LALL *v* JHUMMUN LALL . . 6 N. W., 246

50. ——————— *Form of suit—Joinder of defendants—Joinder of causes of action—Civil Procedure Code, 1882, s 28*—*A* leased certain lands to *B* for a term of seven years commencing with the year 1288 Fasli (19th September 1880). On the 23rd October 1883 *A* sold the lands to *D*, who, under his purchase, became entitled to the rents of the lands from the commencement of the year 1291 Fasli (17th September 1883). When some of the instalments of the rent for the year 1291 Fasli became due, *D* applied for payment thereof to *B*, who informed him that he had paid the whole of the rent for the year 1291 in advance to *A* on the 21st May 1883 *D* then sued *A* and *B* for the rent due, praying a decree for rent against *B*, and in the alternative for a decree against *A* if it should turn out that *B*'s allegation of payment was correct The lower Courts found that *B* had paid *A* in good faith, and they dismissed the suit as against him They also dismissed the suit as against *A* on the ground that the claims against *A* and *B* could not be joined in one suit. On appeal to the High Court,—*Held* that the frame of the suit was unobjectionable, and that on the facts found by the lower Courts *D* was entitled to a decree against *A*. MADAN MOHUN LALL *v* HOLLOWAY . . I. L. R., 12 Calc, 555

51. ——————— *Suit for money on contract for money deposited on kistbandi, and for cancellation of kistbandi.*—There is no misjoinder of causes of action in a suit for money contracted to be paid, and for the cancellation of a kistbandi, and for money deposited on the kistbandi Combined causes of action may be brought in the Court which has jurisdiction to the full amount of such combined causes of action. KINNOO MONEE DEBIA *v* SHOHORAM SIRKAR . . 3 W. R., 128

BROJO KISHORE CHOWDHRANI *v.* KHEMA SOONDAREE DOSSEE . . . . 7 W. R, 409

52. ——————— *Suit for decla-*

53. ——————— *Claims for arrears of rent and to remove cloud on title.*—A

MULTIFARIOUSNESS—*continued.*

54. ——————— *Suit on hundis—Persons parties to hundi in separate capacities*—Where the payee of a hundi, in a suit to recover the amount of the same, made four persons defendants,—*viz*, the drawer and the acceptor of the hundi, his own endorsee, and a party whom plaintiff alleged to be the principal, whose agent was the drawer,—the suit was held to be a combination of four suits in one, not allowed by the Civil Courts. HADEEL BEPAREE *v* CHOALMUN MAH [10 W. R., 263

55. ——————— *Suit for parti-*

multifariousness. *Held* that the raiyats were improperly joined as defendants in the suit. SAMINADA PILLAI *v.* SUBBA REDDIAR . I. L. R, 1 Mad, 333

56. — ——————— *Suit for mis-*

R2,019 14-0 were credited in the accounts of the pagoda; that first and second defendants, when re-

was breach of contract. *Held* on special appeal that the *suit was not multifarious*; that the third defendant was properly included in the suit as a defendant, and did not appear to have been prejudiced in his defence by the course of the proceedings. ARUNACHELLA TEVAR *v.* VENKATASAMI NAIK [7 Mad., 123

57. ——————— *Civil Procedure*

MULTIFARIOUSNESS—*continued.*

injunction restraining her from making similar unlawful alienations in the future. *Held* that the suit as framed was not maintainable, inasmuch as it included within it several distinct causes of action which, under s 45 of Act X of 1877, could not be joined together in the same suit. The course which should be adopted by a Court or Judge, where there has been such a misjoinder of causes of action, discussed KACHAR BHOJ VAIJA v BAI RATHORE . . I. L. R., 7 Bom., 289

58. ——————— *Property situated in different districts—Civil Procedure Code, 1877, ss. 28, 31.*—A, B, C, and D were the proprietors of a 2 annas 13 gundas share in mouzah E, and also of a 2 annas 13 gundas share in mouzah F, both in the district of Bhaugulpore. On 19th September 1872 A mortgaged a 1 anna 4 pie share of E to H. On the 20th September 1872 A, B, C, and D mortgaged their shares in E and F, together with property in the district of Tirhoot, to the plaintiff. On the 24th March 1873 A mortgaged his share in E and F to J. On the 13th November 1874 A and B mortgaged their shares in E to K. On the 25th March 1874 J obtained a decree on his mortgage, and the interests of A and B were purchased on the 5th January 1875 by L. On the 17th April 1874 M, to whom the first mortgage had been assigned, obtained a decree and attached the property mortgaged. L objected that he had already purchased the interest of A, and on the

surplus of R7,664 remained. After the institution of the first suit and before L's purchase, the plain-

on the 3rd September 1877 by N. The plaintiff had his decree transferred for execution to the Bhangulpore Court, and he attached the surplus sale-proceeds and a 1 anna 9 gundas share in E This attachment was withdrawn on the objection of L, who drew out the surplus sale-proceeds. The share purchased by N was also released from attachment The plaintiff now sued L, N, and the mortgagors for a declaration that his decree of the 17th July 1874 affected the E property, to recover the surplus sale-proceeds from L, and in case the decree should not be valid to the extent mentioned, for a decree declaring his prior lien on the property in E. *Held* that the suit was not bad by reason of multifariousness. BUNOSEE SINGH v. SOODIST LALL

[I. L. R., 7 Calc., 739: 10 C. L. R., 383

59. ——————— *Civil Procedure Code, s. 26.*—S. 26 of the Code of Civil Procedure does not authorize the joinder of plaintiffs with antagonistic claims arising out of distinct causes of action. Where one of two widows of a deceased

for the former,—*Held* that the suit was bad for misjoinder. LINGAMMAL v. CHINNA VENKATAMMAL

[I. L. R., 6 Mad., 239

60. ——————— *Suit for maintenance and marriage expenses—Misjoinder of parties.*—A Hindu widow, with her two daughters as co-plaintiffs, sued the son of her deceased husband by another

father's

riage ex

of marri

the plaintiffs a decree for a monthly allowance, and R540 to the widow as arrears of maintenance, and R1,000 for the marriage expenses of the daughters. *Held* that, inasmuch as the mother was the natural guardian of the two other plaintiffs, and it was proper for them to reside with and be provided for by her, and the common maintenance was, so to speak, a joint matter, the suit was not, at any rate at the stage of appeal, open to objection on the ground of misjoinder of parties and causes of action; nor, looking at the peculiar circumstances of this family, which made the mother the most natural and proper person to arrange the marriages of the two minor plaintiffs, was the prayer for marriage expenses improperly added. TULSHA v. GOPAL RAI

[I. L. R., 6 All., 632

61. ——————— *Joinder—Civil Procedure Code, 1877, ss. 28, 31, and 45—Alternative relief—Parties.*—In a suit instituted against six different parties, the plaintiff prayed for khas possession of a four-anna share in a certain lot, or in the alternative, for a decree for arrears of rent against the defendants or such of the defendants as should on inquiry appear to be respectively liable. It appeared that the plaintiff had been kept out of possession by one only of the six defendants, and that, if he was entitled to a decree for arrears of rent, another of the defendants was liable for a portion only of such arrears. *Held* that the suit was not improperly framed, that there was no

62. ——————— *Civil Procedure Code, 1882, ss. 32, 45, and 46—Adding parties—Striking out parties—Causes of action, Joinder or severance of—Non-joinder or misjoinder of parties—Practice—Procedure.*—C sued P to recover posses-

MULTIFARIOUSNESS—*continued*

They filed written statements setting forth their right, and time was allowed in order that the plaintiff might put in a counter statement. Before the case came on again, the Subordinate Judge had been removed, and his successor was of opinion that the causes of action, as against the original defendant

(XIV of 1882), and ordered that they should bear

their cases have been stated, the Court, if it finds the several causes as between plaintiff and the several defendants cannot properly or conveniently be tried together, should deal with them separately as sub-suits under the title and number of the principal suit from which they spring. The dismissal of defendants added without objection, or the addition of whom has been submitted to, is not contemplated, and would tend to further needless expense. The power given by s. 45 does not extend to an order for the dismissal of defendants, and that a fresh suit should be brought against them. Such an order would not be one for the "separate disposal" of the several causes of action; it would be an order preventing the disposal of them in the suit before the Court. S. 45 is meant to apply to cases in which questions arise as to the joinder or severance of several causes of action against the same defendant. For non-joinder or misjoinder of parties provision is made in s. 32 and the plaintiff had not resisted the joinder of the appellants as defendants. The Subordinate Judge could only strike out the name of a party upon an application being made, and no such application had been made. KHADAR SAHEB *v.* CHOTIBIBI

[I. L. R., 8 Bom., 616

63. ———— *Civil Procedure Code (1882), ss. 278-283—Attachment of same pro-*

twelve suits. *R M* now sued in pursuance of the above order to recover his property, and he included as defendants not merely those (defendants Nos. 1 and 2) who had been plaintiffs in suit No. 1548 of 1897, but also those who had been plaintiffs in the twelve other suits, and who had attached the property in execution of their decrees. *Held* that the plaintiff might join in one suit as defendants persons who had decrees against different persons without making the suit multifarious. The right to relief was in respect of the same matter and therefore fulfilled the requirements of s. 28 of the Civil Procedure Code, 1882. RAGHUNATH MUKUND *v.* SAROSH KAMA . . . I. L. R., 23 Bom., 266

64. ———— *Civil Procedure Code, s. 31—Suit for removal of trustees and for money-decree.*—Suit by certain dikshadars or hereditary trustees of the Chitambaram temple against others of the dikshadars praying their removal from office and for a money-decree alleging that they had been jointly guilty of misconduct in respect of temple property in their custody and had obstructed the repair of certain shrines. *Held* that the suit was not bad for misjoinder of causes of action. NATESA *v.* GANAPATI . . . I. L. R., 14 Mad., 103

65. ———— *Misjoinder of*

relief to which he may be entitled. *A*, *B*, and *C*

gagee *E* were proper and even necessary parties.

MULTIFARIOUSNESS—*concluded.*

plaintiff to elect which of the two prayers he wished should be adjudicated upon by the Court. SADU BIN BAGHU *v.* RAM BIN GOVIND
[I. L. R., 16 Bom., 608

66. —————— *Suit for partition of property of deceased by his heirs.*—Two

seven further plaints were filed in the Subordinate Court on behalf of the remaining children, respectively. *Held* (on the question of joinder) that there was no misjoinder of causes of action. If the suits were viewed substantially as suits against trespassers, the plaintiffs, as tenants in common, were competent to sue together in respect of what was thus a common injury to them.] If, on the other hand, the suits were suits for partition, the plaintiffs were *à fortiori* entitled to join ASSAM *v.* PATHUMMA
[I. L. R., 22 Mad., 494

67. —————— *Complaint of dealings by executors as act of mal-administration added to claim in administration suit.*—Where the suit is one to administer the assets of a deceased person, and in the claim various dealings by the executors of the estate are complained of as acts of

68. —————— *When objection*

MUNICIPAL BOARDS.

—————— Control over—

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES . 19 W. R., 309

—————— Power of—

See N.-W. P. AND OUDH MUNICIPALITIES ACT, 1883, s. 55 . I. L. R., 19 All., 313

—————— Secretary of—

See STAMP ACT, SCH. I, ART. 22.
[I. L. R., 19 All., 293

MUNICIPAL COMMISSIONERS.

See COLLECTOR . I. L. R., 1 Bom., 628

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—ACT XXVI OF 1850.
[5 Bom., Cr., 10
8 Bom., Cr., 39

See PUBLIC SERVANT . 4 Bom., A. C., 93
[5 Bom., Cr., 33

See RULES MADE UNDER ACTS.
[8 Bom., Cr., 39

—————— Appeal against assessment by—

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES I. L. R., 1 Calc., 409

—————— Election of—

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 31.
[I. L. R., 19 Calc., 192, 195 note, 198
I. L. R., 22 Calc, 717

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES I. L. R., 24 Calc, 107

—————— Notice of suit against—

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—NOTICE OF SUIT.
[I. L. R., 1 All., 269

See BENGAL MUNICIPAL ACT, 1864, ss. 77, 81 . . . . . 7 W. R., 92
[9 W. R., 279, 562

See MADRAS TOWNS IMPROVEMENT ACT, 1871, s. 168 . I. L. R., 2 Mad., 124

See CASES UNDER NOTICE OF SUIT.

—————— Order of District Judge as to—

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 21 Bom., 279

—————— Power to administer oath.

See BENGAL MUNICIPAL ACT, 1864, s. 6.
[19 W. R., 309

—————— Power to close or divert public highway.

See BENGAL MUNICIPAL ACT, 1864.
[I. L. R., 2 Calc., 425

—————— Power to institute criminal proceedings.

See BENGAL MUNICIPAL ACT, 1884, s. 133.
[I. L. R., 22 Calc., 131

—————— Suit against—

See BENGAL MUNICIPAL ACT, 1864, ss. 77, 87 . . . . . 7 W. R., 93
[5 B. L. R., Ap., 50
I. L. R., 6 Calc., 8

See RES JUDICATA—JUDGMENT ON PRELIMINARY POINTS . 5 B. L. R., Ap., 50

See RIGHT OF SUIT—MUNICIPAL OFFICERS, SUITS AGAINST.

MUNICIPAL COMMISSIONERS
—*continued.*

1. ——— **Liability of Commissioners for negligence or misconduct**—*Beng Act III of 1864*—Municipal Commissioners under Bengal Act III of 1864 and their servants incur no personal responsibility for what they do so long as they act in the line of their duty. But if they do, or order to be done, that which is not within the scope of their auth[illegible]
con[illegible]
do, [illegible]
an [illegible]
men [illegible]
long as they act *bonâ fide* SOONDER LALL *v.* BAILLIE . . . . **24 W. R., 287**

2. ——— **Liability of Corporation for breach of statutory duty**—*Calcutta Municipality Act (Beng. Act IV of 1876), ss. 189, 191, 213, 252—Obstruction in public way—Damages.*—Under s. 189 of Bengal Act IV of 1876, the roads and streets in Calcutta are vested in the Commissioners of the Corporation of the Town of Calcutta, [illegible]
and for such purpose may do all things necessary [illegible]

[illegible]

dition that a contractor licensed to do such works by [illegible]

[illegible]

statutory obligation imposed upon them to repair and maintain the roads, were liable to the plaintiff for a breach of their statutory duty, that where there is a [illegible]

MUNICIPAL COMMISSIONERS
—*concluded.*

[illegible]

under s 191 of Bengal Act IV of 1876. CORPORATION OF TOWN OF CALCUTTA *v.* ANDERSON
I. L. R., 10 Calc., 445

3. ——— **Commissioner acting as Magistrate, Power of**—*Procedure—Proceeding* [illegible]

[illegible]

4. ——— **Editor of newspaper**—*Trial of case on which he has written strong opinion in newspaper.*—The High Court declined to interfere, under s. 296, Act X of 1872, with the order of a Municipal Commissioner, who was the editor of a newspaper, who had, prior to the disposal of the [illegible]

MUNICIPAL COMMITTEE.

See CASES UNDER RIGHT OF SUIT—MUNICIPAL OFFICERS, SUITS AGAINST.

See RIGHT OF SUIT—OBSTRUCTION TO PUBLIC HIGHWAY **I. L. R., 1 All., 557**

MUNICIPAL CORPORATION.

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE.
I. L. R., 3 Calc., 758

MUNICIPAL COURTS.

——— **Jurisdiction of**—

See CASES UNDER ACT OF STATE.

MUNICIPAL DEBENTURES.

[illegible]

After the debentures were issued, a correspondence commenced between the parties with the object of effecting the conversion, in which correspondence the Commissioners intimated to the Company the construction they put upon the Company's tender, *viz.*,

MUNICIPAL DEBENTURES—*concluded.*

that they elected to take land to the full value of their debentures. The Commissioners also intimated to the Company that the latter had selected lots amounting to a part only of their debentures, and required them to select others, giving notice at the same time that they did not consider themselves liable to pay interest. The Company after this proposed to defer exchanging the debentures till their due date, and if the Commissioners consented, not to call for the interest in the meantime, but agreeing to pay a quit-rent equivalent to the interest The Commissioners agreed to this and asked the Company to declare the lots which they would receive in commutation. A selection was made, but not in accordance with the contract · the lots selected being of more value than the debentures. The Commissioners then proposed that the Company should return the debentures, and pay quit-rent upon the additional lots. This was not accepted, but the matter was left in an imperfect state. The Port Canning Land Company subsequently brought an action against the Port Canning Municipality for two years' interest on the debentures. *Held* that the non-acceptance of the proposal as to the additional lots could not affect the previous agreement

MUNICIPAL ELECTION.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 31.
[I. L. R., 19 Calc, 192, 195 note, 198
I. L. R., 22 Calc., 717

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES I. L R., 24 Calc., 107

MUNICIPAL INSPECTOR.

See PUBLIC SERVANT.
[I. L. R., 13 Mad., 131

MUNICIPAL NOTICE.

See NOTICE OF SUIT.

MUNICIPAL OFFICERS.

See CASES UNDER JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES.

See CASES UNDER RIGHT OF SUIT—MUNICIPAL OFFICERS, SUITS AGAINST.

———— Complaints by—

See COURT FEES ACT, 1870, s. 19.
[I. L. R., 16 Mad, 423

MUNICIPAL TAX.

See BOMBAY MUNICIPAL ACT, 1865, s. 2.
[9 Bom., 217

See CASES UNDER TAX.

MUNICIPALITY.

See CASES UNDER THE CALCUTTA, BENGAL, MADRAS AND BOMBAY MUNICIPAL ACTS.

———— Chairman of—

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.
[I. L. R., 17 Calc, 329
I. L. R., 21 All, 348

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.
[I. L. R., 23 Calc., 44

———— Suit against—

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES.

See PARTIES—PARTIES TO SUITS—GOVERNMENT . I. L. R., 15 Mad., 292

See RIGHT OF SUIT—MUNICIPAL OFFICERS, SUITS AGAINST.

———— Suit by—

See LIMITATION ACT, 1877, ART. 149.
[I. L. R., 19 Mad., 154

MUNSIF.

See MAGISTRATE, JURISDICTION OF—WITHDRAWAL OF CASES.
[I. L. R., 15 Mad., 94

See WITNESS—CIVIL CASES—PERSON COMPETENT OR NOT TO BE WITNESS
[6 Mad., Ap., 42

———— Dismissal of—

See ENGLISH COMMITTEE OF HIGH COURT.
[10 B. L. R., 79, 80, 82 note

———— Jurisdiction of—

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWER OF

See PUBLIC SERVANT 4 Bom., A. C, 93

See CASES UNDER RES JUDICATA—COMPETENT COURT—GENERAL CASES.

See CASES UNDER SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GENERAL CASES
[4 Mad., 334
5 Mad., 45, 287
I. L. R., 13 Mad., 145

See SUBORDINATE JUDGE, JURISDICTION OF . . . I. L. R., 7 All., 230
[I. L. R., 14 All., 348
I. L. R., 17 Calc., 155
I. L. R., 14 Mad., 183

MUNSIF—*continued.*

See TRANSFER OF CIVIL CASE—GENERAL CASES . . . 13 W. R., 399
[6 Mad., 18
25 W. R., 219
I. L. R., 8 Mad., 500
I. L. R., 13 All., 324

See CASES UNDER VALUATION OF SUIT—SUITS.

1. ——— **Execution proceedings before Act XVI of 1868**—*Suit pending on abolition of office.*—Where execution had been issued by a Sudder Ameen, and, notwithstanding the proceedings were struck off the file, a consequent attachment was still pending when that office was abolished (by Act XVI of 1868),—*Held* that the Sudder Munsif, who succeeded to the jurisdiction of the Sudder Ameen, had power to take up the case and issue execution proceedings. SREENATH BANERJEE *v.* PURRUM SOOKH CHUNDER . . 25 W. R., 105

2. ——— **Suit pending when Act XVI of 1868 came into operation.**—A suit, of which the subject-matter did not exceed in amount or value R1,000, instituted one day after Act XVI of 1868 received the assent of the Governor General in Council, was held to be cognizable by the local Munsif, and not by the Sudder Munsif of the district. BUNGSHEE BUDDEN DEY *v.* TARINEE CHURN DEY
[14 W. R., 375

3. ——— **Appeal pending when Act XVI of 1868 came into operation**—*Execution of decree—Act XVI of 1868, s. 12.*—At the time of the passing of Act XVI of 1886, which abolished the Courts of Sudder Ameens, an appeal was pending against the decree of the Sudder Ameen which resulted in a modified decree afterwards executed by the Sudder Munsif. *Held* that, although the appeal was pending in a superior Court, yet the proceedings in the suit were pending in the original Court of trial within the meaning of s. 12, and the Sudder Munsif's Court was the only Court which had jurisdiction to execute the decree. GOBIND SINGH *v.* MUNNO RAM DOSS . . 19 W. R., 414

4. ——— **Suit against public servant for acts done by him officially.**—A Munsif had not jurisdiction to try an action brought against a public servant for acts done by him in his official capacity. *Semble*—The only judicial officers having jurisdiction to try such cases would be the Judge or Assistant Judge of the district in which the suit arose. VALLABHRAM JAGJIVAN *v.* WOODHOUSE
[1 Bom., 144

5. ——— **Suit for rent**—*Dekkan Agriculturists' Act, XVII of 1879—Village Munsif.*—A Village Munsif has no jurisdiction to try a suit for rent under the Dekkan Agriculturists' Relief Act, XVII of 1879. VITHAL RAMCHANDRA *v.* GANGARAM VITHOJI . . I. L. R., 5 Bom., 180

6. ——— **Order enforcing award as to determination of rent.**—A Munsif has no jurisdiction to entertain an application and pass an order on the enforcement of an arbitration award relating to the determination of rent. When a Munsif acts without jurisdiction, the question may be the subject of an appeal to the Appellate Court of the district. ALTAF HOSSEIN *v.* GRISH CHUNDER ROY . . . . . 15 W. R., 556

MUNSIF—*continued.*

7. ——— **Suit for dissolution of partnership**—*Jurisdiction—Arbitration—Finality of decree in accordance with award.*—A suit for dissolution of a partnership, taking the accounts of the firm, and a declaration of the plaintiff's right to a certain share in the debts due to the firm, was, with reference to the value of the subject-matter of the suit, instituted in the Court of a Munsif. The matters in difference in the suit were eventually referred to arbitration under Ch. XXXVII of the Code of Civil Procedure, and an award was made declaring the plaintiff entitled to recover a certain sum from the defendant. Judgment and a decree were given in accordance with the award. *Held* that, the award notwithstanding, the question whether the suit was cognizable in the Munsif's Court was entertainable. *Bhagirath v. Ramghulam, I. L. R., 4 All., 283,* referred to KALIAN DAS *v.* GANGA SAHAI
[I. L. R., 5 All., 500

8. ——— **District Munsif**—*Villages under attachment for breach of duty by karnam—Fine.*—A District Munsif's Court has not authority to inflict fines on karnams of villages which are under attachment by that Court for breach of duty on the karnam's part. RAMAKISTNAM *v.* RAGAVACHARI
[I. L. R., 3 Mad., 408

9. ——— **Power to take voluntary depositions**—*Application to restore appeal.*—A Munsif has no power to take voluntary depositions, *e.g.*, the deposition of a party to show his illness where he wishes for restoration of an appeal in the High Court which has been struck off for his absence from that cause. IN THE MATTER OF THE PETITION OF KULNO KHOND KAR . . 7 W. R., 47

10. ——— **Power to transfer suit**—*Mad. Reg. IV of 1816, s. 26—Village Munsif—Jurisdiction.*—In a suit under Regulation IV of 1816, the defendant having objected to the Village Munsif trying the suit on the ground of personal hostility, the Munsif transferred the suit to another Village Munsif. *Held* that the transfer was illegal. *Per* HUTCHINS, J.—*Semble*—In such a case the Village Munsif should report the facts to the District Court, and the District Judge should transfer the case for trial to another Village Munsif. LAKSHMAKKA *v.* BALI . . I. L. R., 8 Mad., 500

11. ——— **Attachment and sale of land**—*Mad. Reg. IV of 1816, s. 30—Village Munsif—Decree—Execution.*—Immoveable property can be attached and sold in execution of a decree of a Village Munsif under the provisions of s. 30 of Regulation IV of 1816. RAMASAMI CHETTI *v.* ANGAPPA CHETTI
[I. L. R., 7 Mad., 220

12. ——— **Power of Village Munsif to administer oath to witness**—*Mad. Reg. IV of 1816—Criminal Procedure Code, s. 195—Sanction for prosecution of witness for perjury by Village Munsif.*—V was tried and convicted under s. 193 of the Penal Code for giving false evidence

MUNSIF—*continued.*

before the Court of a Village Munsif in a suit in which *V* was defendant. The Village Munsif sanctioned the prosecution of *V* under s 195 of the Code of Criminal Procedure. On appeal, the Sessions Judge acquitted *V* on the grounds that a Village

Procedure did not apply. *Held* that both objections to the conviction were bad in law. QUEEN-EMPRESS *v.* VENKAYYA . . . I. L. R., 11 Mad., 375

13. —— —**Village Munsifs**—*Criminal Procedure Code, ss. 1, 480, 482—Contempt of Court.*—Ss. 480-482 of the Code of Criminal Procedure do not apply to Village Munsifs. QUEEN-EMPRESS *v.* VENKATASAMI I. L. R., 15 Mad., 131

14. ———————— *Madras Village Courts Act (Mad. Act I of 1889), s. 13 (3)—"Land," Meaning of—Suit for rent of house.*—In Madras Act I of 1889, s. 13, proviso 3, the word "land" includes land covered by a house, and consequently a suit for house-rent, unless due under a written contract signed by the defendant, is not cognizable in a Village Munsif's Court. NARAYANAMMA *v.* KAMAKSHAMMA . . I. L. R., 20 Mad., 21

15. ———————— *Village Munsif's Court—Succession Certificate Act—Act VII of 1889.*—The provisions of the Succession Certificate Act apply to suits in a Village Munsif's Court. RASINI AMMAL *v.* OLAGA PADAYACHI [I. L. R., 21 Mad., 115

16. ——— **Suit for share of annual allowance**—*Question of title.*—In an action brought to recover a third share of arrears of varshasan or annual allowance paid by the Gaikwar of Baroda to the defendant, and in which the plaintiff alleged that he was entitled to a third share,—*Held* that such an action can be maintained in a Munsif's Court, although it may be necessary to determine the title of the plaintiff to share in such varshasan. RATAN SHANKAR REVASHANKAR *v.* GULABSHANKAR LALSHANKAR . . . 4 Bom., A. C., 173

17. ———— **Suit for money charged on immoveable property.**—*Held* that a suit for money charged on immoveable property in which the money did not exceed R1,000, although the value of the immoveable property did exceed that sum, was cognizable by a Munsif, provided the property was situate within the local limits of his jurisdiction. JANKI DAS *v.* BADRI NATH [I. L. R., 2 All., 698

18. ———————— *Suit on mortgage-*

sion. In a suit to enforce the mortgage-bond in the Court of the Munsif of Diamond Harbour,—*Held* that sayer compensation did not partake of the nature of malikana, that it was not immoveable property or any interest in immoveable property within the meaning of s. 16 of the Code of Civil Procedure, and that therefore the Munsif had no jurisdiction to entertain the suit. *Bungsho Dhur Biswas v. Mudhoo Mohuldar, 21 W. R., 383*, distinguished. SURENDRO PROSAD BHUTTACHARJI *v.* KEDAR NATH BHATTACHARJI . I. L. R., 19 Calc., 8

19. ———— **Suit for redemption of usufructuary mortgage**—*Question of title.*—Where the question in dispute in a suit for redemption of a usufructuary mortgage is not only whether the property has been redeemed out of the usufruct, but whether the property and the right to redeem belongs to the plaintiff, and the value of the property exceeds R1,000, such suit is not cognizable by a Munsif. KALIAN DAS *v.* NAWAL SINGH [I. L. R., 1 All., 620

20. ——— **Mortgage set up by defendant exceeding limit of jurisdiction**—*Court Fees Act, s. 7, cl. 9—Ejectment—Madras Civil Courts Act (III of 1873).*—In a suit brought in a District Munsif's Court to recover several parcels of land from the defendant, plaintiff alleged that defendant held a valid mortgage of R200 on two parcels which he offered to redeem. As to the other parcels, he alleged that, if any charges had been created in defendant's favour over them by his predecessor in title, such charges were invalid. The suit, as valued by the plaintiff, was within the pecuniary limit of the Munsif's jurisdiction. Defendant pleaded that he held a mortgage for R3,000 over the land, and therefore the Munsif's Court had no jurisdiction to try the suit. The Munsif tried the question of the validity of the defendant's mortgage, and decreed possession to plaintiff on payment of R906 due on account of mortgages and R1,647-11-9 on account of improvements. On appeal, the District Judge held that the Munsif had no jurisdiction, reversed the decree, and ordered the plaint to be returned to be presented in the proper Court. *Held* that the Munsif's Court had jurisdiction. CHANDU *v.* KOMBI [I. L. R., 9 Mad., 208

21. ———— **Suit regarding minors**—*Act IX of 1861.*—Suits regarding minors are cognizable by principal Civil Courts of districts. Munsifs have no jurisdiction to try them. KRISTO CHUNDER ACHARJEE *v.* KASHEE THAKOORANEE 23 W. R., 340

HARASUNDARI BAISTABI *v.* JAYADURGA BAISTABI [4 B. L. R., Ap., 36 : 13 W. R., 112

entertaining a suit by a Hindu father to recover possession of his minor son alleged to be illegally detained by the defendant. KRISHNA *v.* READE [I. L. R., 9 Mad., 31

23. ——— **Suit for dismissal of a zamindari karnam**—*Mad. Reg. XXV of 1802, s. 11—Mad. Reg. XXIX of 1802, ss. 6, 7, 10, 16, 19.*—A suit by a zamindar for the dismissal of a zamindari karnam cannot be entertained by a

MUNSIF—*continued.*

District Munsif. The Subordinate Court, and the District Court where there is no subordinate Court, is the tribunal that has taken the place of the Court of Adawlut of 1802. VENKATANARASIMHA *v.* SURYANARAYANA . . I. L. R., 13 Mad., 168

24. ———— **Suit for office of karnam**—*Mad. Reg. XXIX of 1802, s. 7—District Court, Jurisdiction of.*—A suit to establish plaintiff's right to, and to recover possession of, the office of karnam, and for the restoration of the inam lands, and for damages, was brought in the Court of the District Munsif. *Held* that it was properly so brought. JAGANNATHA PILLAI *v.* SUBBARAYA PILLAI . . I. L. R., 22 Mad., 340

25. ———— **Suit to recover share of inheritance**—*Madras Civil Courts Act (III of 1873), s. 12—Subject-matter of suit.*—The plaintiff sued to be declared an heir to a deceased Mahomedan and to recover her share of the inheritance, the share claimed being less than R2,500, while the value of the whole estate exceeded that amount. *Held* that the suit was within the jurisdiction of a District Munsif. KHANSA BIBI *v.* SYED ABBA

[I. L. R., 11 Mad., 140

26. ———— **Suit for partition and mesne profits**—*Madras Civil Courts Act, 1873—Civil Procedure Code, s. 544.*—*N* sued *S* and others for partition of a share of certain land, and claimed mesne profits from other defendants who were tenants of the land. *S* obtained a decree by consent for her share, and a sum of 99 rupees was decreed to her against the tenants for mesne profits. Against this decree the tenants appealed. The Subordinate Judge, finding that the subject-matter of the suit, the land of which partition was claimed, exceeded the jurisdiction of the Munsif, reversed the decree of the Munsif, and directed the plaint to be returned for presentation in the proper Court. It was contended, on appeal to the High Court, that the Subordinate Judge could not set aside the decree against the tenants for mesne profits. *Held* that, as the Munsif's Court had no jurisdiction to entertain the suit for partition, it could make no decree for mesne profits. NAGAMMA *v.* SUBBA . I. L. R., 11 Mad., 197

27. ———— **Suit for share of undivided property**—*Madras Civil Courts Act (Mad. Act III of 1873), s. 12—Suits Valuation Act (VII of 1887), s. 8.*—Persons entitled to a share in certain lands of a village only part of which was held in severalty, executed a mortgage of part of the lands due to their share. The mortgage contained a description of the land comprised therein by paimash numbers and admeasurement. The mortgaged property was brought to sale in execution of a mortgage-decree, and was purc[illegible] by the present plaintiff. The plaintiff now [illegible] and possession of the share [illegible]

R1,870, and not [illegible] defendants were the mortgagors and the [illegible] interested in the land, their respective shares not having been ascertained and demarcated. *Held* that

MUNSIF—*continued.*

the suit was within the jurisdiction of a District Munsif. GHAKRAPANI ASARI *v.* NARASINGA RAU

[I. L. R., 19 Mad., 56

28. ———— **Remedy by ordinary suit barred**—*Madras Forest Act, 1882, s. 10—Procedure.*—Where by an Act of the Legislature powers are given to any person for a public purpose from which an individual may receive injury, if the mode of redressing the injury is pointed out by the statute, the ordinary jurisdiction of Civil Courts is ousted, [illegible] the party cannot proceed by [illegible] to cancel [illegible] a District Judge under [illegible] Act, 1882, and to recover certain land, a claim to which had been rejected under the said section. *Held* that the Munsif had no jurisdiction to entertain the suit. RAMACHANDRA *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 12 Mad., 105

29. ———— **Mad. Act IV of 1863**—*Small Cause Court Judge—Act XI of 1865.*—A District Munsif is a Small Cause Court Judge under Madras Act IV of 1863 within Act XI of 1865. HABAJAI KUMARA VENKATA PERUMAL RAJ *v.* KANNIAPPAH. ZAMINDAR OF KARVATINUGGAR *v.* KANNIAPPAH

[4 Mad., 149

30. ———— Madras Act IV of 1863 did not take away the former jurisdiction given to the District Munsif in respect of causes of action arising within the limits of his jurisdiction. MAGAM TIMMAYA *v.* TANGATTUR KANDAPPA

[2 Mad., 82

31. ———— *Suit for money paid to use of undivided brother.*—Plaintiff sued for [illegible] money paid for the use of defendant, [illegible] that plain- [illegible] which exceeded [illegible] also the amount for which a suit would lie [illegible] Munsif under Act IV of 1863. *Held* that, provided it was proved in evidence that the money was paid out of plaintiff's self-acquired property, the suit was cognizable by the Munsif under Act IV of 1863. *Held* [illegible] the share of the defendant being both in [illegible] Munsif's Small [illegible] even [illegible] PERUMAL PILLAI *v.* PANCHARADA

[3 Mad., 339

32. ———— **Suit against Government**—*Small Cause Court Act, XI of 1865, s. 9.*—A Munsif has jurisdiction to try a suit against Government which, but for s. 9, Act XI of 1865, would be cognizable by a Court of Small Causes. KOMALOODEEN SHEIKH *v.* COLLECTOR OF MIDNAPORE

[11 W. R., 233

33. ———— **Suit cognizable in Small Cause Court**—*Defendant residing out of jurisdiction.*—A Munsif has no jurisdiction as a Small Cause Court to take cognizance of a suit against defendants not resident within his jurisdiction. ANONYMOUS . . . . 3 Mad., Ap., 24

MUNSIF—*continued.*

before the Court of a Village Munsif in a suit in which *V* was defendant. The Village Munsif sanctioned the prosecution of *V* under s. 195 of the Code of Criminal Procedure. On appeal, the Sessions Judge acquitted *V* on the grounds that a Village

other), and because s. 195 of the Code of Criminal Procedure did not apply. *Held* that both objections to the conviction were bad in law. QUEEN-EMPRESS *v.* VENKAYYA . . . I. L. R., 11 Mad., 375

13. ——— Village Munsifs—*Criminal Procedure Code, ss. 1, 480, 482—Contempt of Court.*—Ss. 480-482 of the Code of Criminal Procedure do not apply to Village Munsifs. QUEEN-EMPRESS *v.* VENKATASAMI I. L. R., 15 Mad., 131

14. ——— *Madras Village Courts Act (Mad. Act I of 1889), s. 13 (3)—"Land," Meaning of—Suit for rent of house.*—In Madras Act I of 1889, s. 13, proviso 3, the word "land" includes land covered by a house, and consequently a suit for house-rent, unless due under a written contract signed by the defendant, is not cognizable in a Village Munsif's Court. NARAYANAMMA *v.* KAMAKSHAMMA . . I. L. R., 20 Mad., 21

15. ——— *Village Munsif's Court—Succession Certificate Act—Act VII of 1889.*—The provisions of the Succession Certificate Act apply to suits in a Village Munsif's Court. RASIBI AMMAL *v.* OLAGA PADAYACHI

[I. L. R., 21 Mad., 115

16. ——— Suit for share of annual allowance—C

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Court, although it may be necessary to determine the title of the plaintiff to share in such varshasan. RATAN SHANKAR REVASHANKAR *v.* GULABSHANKAR LALSHANKAR . . . 4 Bom., A. C., 173

17. ——— Suit for money charged on immoveable property.—*Held* that a suit for money charged on immoveable property in which the money did not exceed R1,000, although the value of the immoveable property did exceed that sum, was cognizable by a Munsif, provided the property was situate within the local limits of his jurisdiction. JANKI DAS *v.* BADRI NATH

[I. L. R., 2 All., 698

18. ——— *Suit on mortgage-bond mortgaging sayer compensation—Malikana—Interest in immoveable property—Civil Procedure Code, s. 16—Beng. Reg. XXVII of 1793.*—A mortgaged at Calcutta to *B* his sayer compensation pay-

MUNSIF—*continued.*

property or any interest in immoveable property within the meaning of s. 16 of the Code of Civil Procedure, and that therefore the Munsif had no jurisdiction to entertain the suit. *Bungsho Dhur Biswas v. Mudhoo Mohuldas, 21 W. R., 383,* distinguished. SURENDRO PROSAD BHUTTACHARJI *v.* KEDAR NATH BHATTACHARJI . I. L. R., 19 Calc., 8

19. ——— Suit for redemption of usufructuary mortgage—*Question of title.*—Where the question in dispute in a suit for redemption of a usufructuary mortgage is not only whether the property has been redeemed out of the usufruct, but whether the property and the right to redeem belongs to the plaintiff, and the value of the property exceeds R1,000, such suit is not cognizable by a Munsif. KALIAN DAS *v.* NAWAL SINGH

[I. L. R., 1 All., 620

20. ——— Mortgage set up by defendant exceeding limit of jurisdiction—*Court Fees Act, s. 7, cl. 9—Ejectment—Madras Civil Courts Act (III of 1873).*—In a suit brought in a District Munsif's Court to recover several parcels of land from the defendant, plaintiff alleged that defendant held a valid mortgage of R206 on two parcels which he offered to redeem. As to the other parcels, he alleged that, if any charges had been created in defendant's favour over them by his predecessor in title, such charges were invalid. The suit, as valued by the plaintiff, was within the pecuniary limit of the Munsif's jurisdiction. Defendant pleaded that he held a mortgage for R3,000 over the land, and therefore the Munsif's Court had no jurisdiction to try the suit. The Munsif tried the question of the validity of the defendant's mort-

reversed the decree, and ordered the plaint to be returned to be presented in the proper Court. *Held* that the Munsif's Court had jurisdiction. CHANDU *v.* KOMBI

[I. L. R., 9 Mad., 208

21. ——— Suit regarding minors—*Act IX of 1861.*—Suits regarding minors are cognizable by principal Civil Courts of districts. Munsifs have no jurisdiction to try them. KRISTO CHUNDER ACHARJEE *v.* KASHEE THAKOORANEE 23 W. R., 340

HARASUNDARI BAISTABI *v.* JAYADURGA BAISTABI

[4 B. L. R., Ap., 36 : 13 W. R., 112

22. ——— *Act IX of 1861—Civil Procedure Code, ss. 11, 15—Parent and child—Suit for recovery of minor by parent.*—Act IX of 1861 does not debar a District Munsif's Court from

23. ——— Suit for dismissal of a zamindari karnam—*Mad. Reg. XXV of 1802, s. 11—Mad. Reg. XXIX of 1802, ss. 5, 7, 10, 16, 18.*—A suit by a zamindar for the dismissal of a zamindari karnam cannot be entertained by a

MUNSIF—*continued.*

appeal, the petition for revision was not admissible TIRUPATI RAJU v. VISSAM RAJU

[I. L. R., 20 Mad., 155

claim.—In a suit brought in a District Munsif's Court to declare certain land liable to be sold in execution of a decree for more than R2,500, the defendants pleaded that the Court had no jurisdiction. The Munsif allowed the plaintiff to amend the plaint by stating that he abandoned his claim to execute the decree against the land for more than R2,500 On appeal the District Judge held that the plaint could not be amended after the first hearing. *Held* on appeal to the High Court that the claim was not one which could be amended so as to bring the suit within the pecuniary jurisdiction of the Munsif ANNAJI RAU v. RAMA KURUP

[I. L. R., 10 Mad., 152

42. — Decree passed in a restored suit pending appeal against order of restoration—*Civil Procedure Code, ss. 98, 99.*—A suit was filed in a Munsif's Court, but neither party appeared for the hearing, and the suit was dismissed The Munsif subsequently on review made an order restoring the suit and eventually decreed for the plaintiff The defendant in the meanwhile appealed to the District Court against the order of restoration, and after the date of the decree the District Court made an order allowing the defendant's appeal The plaintiff appealed to the High Court, and the order of the District Court was reversed, and the order of restoration upheld *Held* that the Munsif's decree was not passed without jurisdiction. ALWAR v. SESHAMMAL I. L. R., 10 Mad., 280

43. — District Munsifs—*Suit for declaration of title to paid offices—Withdrawal of claim to some of the offices—Office still claimed involving the right to the others.*—In a suit to declare title to four paid offices in a temple, the

material that the amount of the decree was ... than the limit of the Munsif's jurisdiction, and that

MUNSIF—*continued.*

the case was therefore triable by the Munsif. *Gulzari Lal v. Jadaun Rai, I. L. R., 2 All., 799,* distinguished. DURGA PRASAD v. RACHLA KUAR

[I. L. R., 9 All., 140

45. — — Attached property, Suit to establish right to—*Bengal Civil Courts Act (VI of 1871), s. 20—Value of the subject-matter in dispute—Civil Procedure Code (Act XIV of 1882), s. 283—Valuation of suit.*—A Munsif has jurisdiction to try a suit brought under s. 283 of the Civil Procedure Code to test the question whether a property which has been attached in execution is liable to pay the claim of the creditor, the value of the property being over one thousand rupees, but the amount of the debt being less than that sum. In such suits the amount which is to settle the jurisdiction of the Court is the amount which is in dis-

Rai, I. L. R., 2 All., 799, Krishnama Chariar v. Srinivasa Ayyangar, I. L. R., 4 Mad., 339; and *Dayachand Nemchand v. Hemchand Dharamchand, I. L. R., 4 Bom., 515,* followed. MODHUSUDUN KOER v. RAKHAL CHUNDER ROY

[I. L. R., 15 Calc., 104

46. — Application to be declared insolvent made to Court to which decree

47. — Decree containing order for ascertainment of mesne profits from date of suit to date of recovery of possession—*Effect on jurisdiction of such mesne profits added to amount of decree exceeding jurisdiction of the Munsif—Valuation of suit.*—A suit, valued at R950, was brought in the Munsif's Court to recover possession of certain lands on the ground of illegal dispossession. No mesne profits up to the date of suit

MUNSIF—*concluded.*

RAMESWAR MAHTON *v.* DILU MAHTON
[I. L. R., 21 Calc., 550

48 ———— Power of District Munsif on revision—*Madras Village Courts' Act (Mad. Act I of 1889), s. 73.*—A District Munsif has no

MURDER.

See CASES UNDER ABETMENT—MURDER.

See ATTEMPT TO COMMIT OFFENCE.
[4 Bom., Cr., 17
8 Bom., Cr., 164
I. L. R., 15 Bom., 194
I. L. R., 14 All., 38
I. L. R., 20 All., 143

See CRIMINAL PROCEDURE CODES, s. 376 (1872, s. 288 . I. L. R., 1 Bom., 639

See CASES UDER CULPABLE HOMICIDE.

See DACOITY . I. L. R., 16 All., 437
[I. L. R., 17 All., 86

See EVIDENCE—CRIMINAL CASES—CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE.
[I L. R., 13 Mad., 426

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—MURDER.
[I. L. R., 2 All , 218
I. L. R., 10 Bom., 258, 263

See CASES UNDER SENTENCE—CAPITAL SENTENCE.

See CASES UNDER UNLAWFUL ASSEMBLY.

See VERDICT OF JURY—GENERAL CASES.
[1 W. R., Cr., 50
21 W. R., Cr., 1
I. L. R., 20 Bom., 215

——— Abetment of—

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT
[I. L. R., 19 Bom., 105

1. ———— Motive, Proof of.—The evidence as to the motives with which a prisoner commits an offence should be of the strictest kind. QUEEN *v.* ZAHIR . . . . . 10 W. R., Cr., 11

2. ———— Motive or ill-will, Proof of.—Proof of motive or previous ill will is not necessary to sustain a conviction for murder in a case where a person is coolly and barbarously put to death. QUEEN *v.* JAICHAND MUNDLE . 7 W. R., Cr., 60

MURDER—*continued.*

3. ———— Absence of premeditation—*Culpable homicide.*—The absence of premeditation will not reduce a crime from murder to culpable homicide not amounting to murder. QUEEN *v.* MAHOMED ELIM . . . 3 W. R., Cr., 40

4. ———— Suffering death by consent—*Penal Code, s. 300, excep. 5.*—In a case of a wife consenting . . .

in exculpation of a prisoner's guilt. QUEEN *v.* ANUNTO RURNAGAT . . 6 W. R., Cr., 57

5. ———— Grievous hurt, Murder arising from—*Inseparable acts.*—In order to convict a person of murder arising out of grievous hurt, it is indispensable that the death should be clearly and directly connected with the act of violence. QUEEN *v.* MAHOMED HOSSEIN
[W. R., 1864, Cr., 31

6. ———— Act by which death is caused occurring in dacoity—*Penal Code, s. 300.*—If the act by which death is caused does not in itself constitute the crime of murder, it does not constitute murder because it is coupled with dacoity. QUEEN *v.* RAM COOMAR CHUNG . 1 Ind. Jur., O. S., 108

7. ———— Murder in committing dacoity.—When murder is committed in the commission of a dacoity, every one of the persons concerned in the dacoity is liable to be punished with death. QUEEN *v.* RUCHEE AHEN 2 W. R., Cr., 39

8 ———— Culpable homicide—*Distinction between it and murder.*—Culpable homicide and murder distinguished. QUEEN *v.* GORACHAND GOPE
[B. L. R., Sup. Vol., 443: 5 W. R., Cr., 45
1 Ind. Jur., N. S., 177

9 ———— Grave and sudden provoca-

near relative, and, without the use of any weapon, joined that relative in committing an assault upon the deceased which caused his death, the offence committed was held to have been culpable homicide not amounting to murder. QUEEN *v.* GORYEBOOLLAH
[5 W. R., Cr., 42

10. ———— *Grievous hurt.*—A man who, by a single blow with a deadly weapon, killed another man who, at dead of night, was entering his room for the purpose of having criminal intercourse with his wife, was held guilty not of murder, but of causing grievous hurt on a grave and sudden provocation QUEEN *v.* CHULLUNDER PORAMANICK
[3 W. R., Cr., 65

11. ———— *Culpable homicide.*—Culpable homicide not amounting to murder is when a man kills another being deprived of self-control by reason of grave and sudden provocation. But when the act is done after the first excitement had

MURDER—*continued.*

passed away, and there was time to cool, it is murder. QUEEN *v.* YASIN SHEIKH
[4 B. L. R., A. Cr., 6: 12 W. R., Cr., 68

12. ———— *Culpable homicide not amounting to murder—Penal Code, ss. 300, excep 1, 302, 304* —Upon the trial of a person

that the accused took up an axe and followed her, found her in conversation with her paramour in a public place, and immediately killed her. *Held* that the act of the

[I. L. R., 8 All., 622

13. ———— *Culpable homicide*

PASPUT GOPE *v.* RAM BHAJAN OJHA
[1 C. W. N., 545

14. ———— *Culpable homicide not amounting to murder—Penal Code, ss. 300, excep 1, 302, 304* —An accused person was convicted of culpable homicide not amounting to murder in respect of the widow of his cousin, who lived with him. The evidence showed that the

15. ———— Absence of intention to kill

[8 W. R., Cr., 41

16. ———— Intention to kill another person.—Where an accused killed *A*, whom he had no intention of killing, by a blow with a highly lethal weapon intended to kill *B*, he was held guilty of the murder of *A*. QUEEN *v.* PHOMONEE ARUM
[8 W. R., Cr., 78

17. ———— Absence of proof of common intention to cause death—*Penal Code (Act XLV of 1860), s. 302* —Where three prisoners assaulted the deceased and gave him a beating, in the course of which one of the prisoners struck the deceased a blow on the head, which resulted in death, —*Held* that, in the absence of proof that the prisoners had the common intention to inflict injury likely to cause death, they could not be convicted of murder. QUEEN-EMPRESS *v.* DUMA BAIDYA
[I. L. R., 19 Mad., 483

18. ———— Exposure of child—*Penal Code, s. 317—Remote cause of death.*—*Held* that where, from the circumstances, it appeared that a child had been exposed by the prisoner died, but that death was not caused except very remotely by the exposure, the prisoner, though guilty under s. 317

19. ———— Neglect of child—*Culpable homicide—Death from starvation.*—Where it appeared that the prisoner, a Rajput, had allowed his female child, after the mother's death, to gradually languish away and die from want of proper sustenance, and had persistently ignored the wants of the child, although repeatedly warned of its state and the consequences of his neglect of it, and there was

20. ————

21. ———— Right of private defence—

Judge. The sentence being referred to the High Court for confirmation, it was held that the prisoner had been legally convicted of murder, that he had in-

MURDER—*continued*

nishment,
ment for

, Cr., 73

See Queen v. Fukeera Chamar
[6 W. R., Cr., 50

22. ——— **Death from blow in a fight.**

23. ——— **Fatal blow after quarrel**—*Penal Code, s. 300, cls (2) and (3).*—Two persons met each other in a drunken state and commenced a quarrel, during which they became grossly abusive to each other. This lasted for about half an hour, when one of them ran to his own house, distant 30 yards from the spot, and came back with a heavy pestle, with which he *struck the other a violent blow on the left* temple as the latter was rising, or had just risen from the ground, causing instant death. *Held* that the act was done with the intention of causing such bodily injury as was likely to cause death, and also with the knowledge that such act was likely to cause death, and that the offence committed was murder within the provisions of cls. (2) and (3), s. 300, Penal Code. Queen v. Dasser Bhootan
[8 W. R., Cr., 71

knowledge that the act was likely to cause death, the conviction should be of murder, and not of culpable homicide not amounting to murder. Queen v. Sobeel Mahee . . 5 W. R., Cr., 32

25. — — **Beating with knowledge of likelihood to cause death.**—*Held* by the

26. ——— **Blow struck by order of another person**—*Death by beating.*—Where a blow is struck by *A* in the presence of and by the order of *B*, both are principals in the transaction; and where two persons join in beating a man and he dies, it is not necessary to ascertain exactly what the effect of each blow was. Queen v. Mahomed Asgar
[23 W. R., Cr., 11

Queen v. Gour Chunder Das
[24 W. R., Cr., 5

MURDER—*continued.*

27. ——— **Presumption from consequences of act likely to cause death**—*Cal-*

Empress . . . 2 C. L. R., 211

28. ——— **Conspiracy to kill**—*Penal Code, s. 302.*—*L*, *C*, *K*, and *D* conspired to kill *S*. ... then *C* ... *to the* ... *K* and ... *Held* ... *K* and ... it was doubtful whether *S* was not dead when they struck him, transportation for life was an adequate punishment for their offence. Empress v. Chattar Singh
[I. L. R., 2 All., 33

death. Where a poisonous drug was administered

of an offence under s.

Queen v. Kala Chand Gope . 10 W. R., Cr., 59

30. ——— **Death caused by snake-charmers**—*Culpable homicide.*—Certain snake-charmers, by professing themselves able to cure snake-bites, induced several persons to let themselves be

[3 B. L. R., A. Cr., 25: 12 W. R., Cr., 7

31. ——— *Penal Code, ss. 301, 304A*—*Culpable homicide*—*Causing death by negligence.*—A snake-charmer exhibited in public

MURDER—*concluded*

a venomous snake, whose fangs he knew had not been extracted, and to show his own skill and dexterity, but without any intention to cause harm to any one, placed the snake on the head of one of the spectators, the spectator tried to push off the snake, was bitten, and died in consequence. *Held* the snake-charmer was guilty, under s 304 of the Penal Code, of culpable homicide not amounting to murder, and not merely of causing death by negligence, an offence punishable under s 304A. EMPRESS v. GONESH DOOLEY I. L. R., 5 Calc., 351: 4 C. L. R., 580

32. ——— **Running amuck** — *Punishment*.—Where a quiet peaceable man, suddenly, and without the least motive or provocation, runs amuck against all around him, his case is different from an ordinary case of deliberate murder deserving of the extreme penalty. QUEEN v. EISHONATH BUNNEEA [8 W. R., Cr., 53

33 ——— **Presumption of death** —In a case where a man was struck on the head in a boat with a heavy paddle and knocked overboard in a large river in the height of the rains, and had never been heard of since, it was held impossible to suppose that the man was still alive, and the conviction of murder was upheld. QUEEN v. POORUSOOLAH SIKHDAR . 7 W. R., Cr., 14

34. ——— **Sacrifice of son by father.**—Curious case of murder where a father sacrificed his son, because wealth had not . . . afterw. . .

. . . Cr., 100

. . . **Charge of murder where no body is found**—*Penal Code, s 302*—"*Corpus delicti.*"—The mere fact that the body of the murdered person has not been found is not a ground for refusing to convict the accused person of the murder. EMPRESS v. BHAGIRATH

36. ——— [I. L. R., 3 All., 383

. . . Although, under some circumstances a charge of murder may be sustained, when the body of the person said to have been murdered is not forthcoming, still, when that is the case, the strongest possible . . . the murder . . .

. . . 11 Calc., 635

. . . ——— **Conviction of murder where body is not found**—*Sentence of death.*—A Judge was held to have exercised a proper discretion in not passing sentence of death in a case in which the dead body was not found. QUEEN v. BUDDEROODEEN . . 11 W. R., Cr., 20

MUSCAT ORDER IN COUNCIL.

——— **November 4th, 1867.**

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL. [I. L. R., 24 Bom., 471

MUTARAFA.

See TAX . I. L. R., 9 Mad., 14

MUTINY ACT.

——— **s. 99.**

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY . I. L. R., 1 All., 730

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MILITARY MEN. [2 B. L. R., S. N., 3, 7 6 Mad., 83

——— **s. 101.**

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS. [I. L. R., 5 Calc., 124

——— **s. 103.**

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MILITARY MEN. [2 Mad., 389

MUTUAL ACCOUNTS OR DEALINGS.

See CASES UNDER LIMITATION ACT, 1877, ART. 85

MUTUAL ASSURANCE SOCIETY.

See COMPANY—FORMATION AND REGISTRATION . I. L. R., 17 Calc., 786

MUTUAL BENEFIT SOCIETY.

1. ——— **Power of majority to alter rules**—*Payment of pensions in England—Adjustment of payments in accordance with rate of exchange—Interest of subscriber to society.*—The U. S. F. P. Fund, a Society established, as stated in rule 2 of the Rules of the Society, "to provide for . . . tenance of the widows . . . subscribe t. . . below, or t . . . upon by the . . . or by a majority of them," had, prior to 1850, passed a rule (33) that "widows, being incumbents on the Fund, shall be paid their pensions at any place they may desire, subject to the usual charges of remittance; the pensions of children, being incumbents on the Fund, shall also be so paid and on the same condition." The subscriptions were then, and continued to be, paid in rupees, and the pensions were calculated in rupees according to certain tables. On being admitted, a subscriber had to "promise and engage to submit to, and abide by, the rules and bye-laws of the Institution" (rule 22), and by rule 27 had to "pay a fee equal to ten per cent. on the amount of monthly pension insured." Rule 60 gave power to alter any existing rule by the duly recorded votes of a majority of the subscribers. In 1850 exchange between India and England being then about par, rule 33 was repealed, and a new rule (41) was substituted for it, which provided that "incumbents on the Fund shall be paid their annuities in India at par, or in Europe at the fixed rate of two shillings in the rupee." On the 1st July 1876, exchange being adverse on remittances from India to England, a rule was passed, which provided that "incumbents on the Fund shall be paid their annuities in India in full, and those residing in Europe at the rate of exchange

MUTUAL BENEFIT SOCIETY—*continued.*

fixed for the official year by the Secretary of State; annuities already due or hereafter becoming due on risks accepted before the 1st July 1876 shall be payable to incumbents residing in Europe at the fixed

accepted before the 1st July 1876, shall be payable to incumbents residing in Europe at the fixed rate of two shillings to the rupee: but all other annuities due, or becoming due, shall be paid, if to incumbents in India, in full, and if to incumbents residing in Europe in London, at the market rate of exchange." The plaintiffs were the widow and children of *F*, a member of the Society, who was admitted as a subscriber for the benefit of his widow in November 1871 for the benefit of his son in September 1873, and for the benefit of his daughter in November 1874 He commenced to pay an increased subscription for the benefit of his son in September 1878. He was not one of the majority who voted in favour of the rule of the 22nd May 1[illegible]
subscribers
up to that
Fund. In a
residing in England, claimed to be paid their pensions at the rate of two shillings in the rupee,—*Held* that *F* had no vested interest at the time of the passing of the rule of the 22nd May 1880, that the plaintiffs were, with respect to their pensions, bound by the terms of that rule, which a majority of the subscribers had full powers to pass so as to affect the nominees of all existing subscribers, and therefore the suit should be dismissed Rule 41 gave an un-

accordance with the rate of exchange, such a power might be implied for the purpose of continuing the business of the Association. FALLE *v.* MACEWEN

[I. L. R., 7 Calc., 1: 8 C. L. R., 577

2. ——— Madras Civil Service An-

subscriptions of the Civil Servants to that Fund to the amount of one half and by contributions by
[illegible] other
l by
defi-
It
f the
Fund, where an excess of subscriptions had been paid by a subscriber entitled to an annuity beyond the

MUTUAL BENEFIT SOCIETY—*concluded.*

scriptions in excess of the half value of the annuity

[4 W. R., P. C., 10: 7 Moore's I. A., 361

3. ——— Rules of Benefit Society—*Power to alter rules.*—The Bombay Uncovenanted Service Family Pension Fund was a voluntary society established in 1850. Its object was to provide pensions for the widows of its members. One of its rules provided that the rules of the society were sub-

plaintiff became a member in 1875. At that time one of the rules (which had been passed in 1871) provided that the pensions of widows resident in Europe should be payable to them at the rate of 2*s.* per rupee. On the 20th July 1895 the society

to have her pension paid at par. *Held*, dismissing the suit, that the society was competent to alter its rules, and that the plaintiff was bound by such altered rules. The contract with the plaintiff was that his widow, if he left one, should receive such pension as the rules prescribed, and that the rules were liable to alteration by a majority at a general meeting to which he would be subject so long as he remained a member. STEVENS *v.* BEDFORD

[I. L. R., 22 Bom., 451

MUTUAL CREDIT.

See INSOLVENT ACT, s. 39.

[I. L. R., 19 Calc., 146

MUTWALLI.

See CASES UNDER MAHOMEDAN LAW—ENDOWMENT.

——— Suit to remove—

See ACT XX OF 1863, s. 18.

[15 B. L. R., 167